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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BRANDI JOHNSON,

4 Plaintiff,

5 v.

12 CV 4460 (HB)

6 LISA STEIN, ROB CARMONA and
7 PHIL WEINBERG,

8 Defendants.

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9 New York, N.Y.
10 September 3, 2013
10:40 a.m.

11 Before:

12 HON. HAROLD BAER, JR.,

13 District Judge

14 APPEARANCES

15 PHILLIPS & PHILLIPS
Attorneys for Plaintiff

16 BY: MARJORIE MESIDOR
ALEX UMANSKY

17 GORDON & REES, LLP
18 Attorneys for Defendants
19 BY: DIANE KREBS
KUUKU ANGATE MINNAH-DONKOH

20 Also present: Daphney Guillaume, Esq.
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(Trial resumed)

(In open court; jury not present)

THE COURT: I gather you have a couple of open items, and I would be glad to try and resolve them so that we don't keep the jury waiting any longer. As you know it's really not my choice.

MS. MESIDOR: Good morning, your Honor. May I address the Court from here, or would you like me to go to the podium?

THE COURT: You can do whatever you would like.

MS. MESIDOR: Good morning, your Honor.

Apologies. My legal team and I tried to look at the documentation that we received from defendants as quickly as possible so that we would not waste the Court's time.

There are a number of issues that are presented and a couple of outstanding issues from our original application. As it relates to what has been presented by defendants to present to the jury today, we were given a Citibank account that belongs jointly to Mr. Carmona and his wife with a number of redacted items that shows a move of approximately \$15,000, but where these things have been moved to and from, your Honor, we cannot tell because it's completely redacted. That's the first issue.

I have discussed the matter with counsel. It's been represented to me that counsel has the unredacted copy. If

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1 your Honor is so inclined, we would consent to an in camera
2 review of that to see where these funds have been transferred
3 from.

4 That's the first issue. Would you like me to
5 continue, your Honor, or would you like to take them one at a
6 time?

7 THE COURT: I would be glad to hear anything that the
8 defendant wants to say. I mean, if she wants to represent that
9 it all went to an orphanage, I suppose we could forego further
10 conversation. She is apparently doesn't want to say that.

11 MS. KREBS: I'm sorry. If I want to say? I didn't
12 hear the end of it.

13 THE COURT: If the \$15,000 that is in question went to
14 an orphanage, then we don't have to pursue it. If it went to
15 somewhere else where indeed it might be reachable, then we
16 ought to look at it.

17 MS. KREBS: Your Honor, they did not go to an
18 orphanage. Most of the transfers actually were between the
19 checking and the money market account, which again for an in
20 camera review we are happy for your Honor to take a look at it.
21 There were some checks that were just regular bills that were
22 paid just as part of normal process.

23 Again, I make that representation, but I am more than
24 happy to have your Honor do an in camera review -- it is not a
25 very long document -- to substantiate that. It is not as

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1 though items were being transferred out offshore or to another
2 account that has not been already disclosed.

3 THE COURT: Your position is it was used for everyday
4 living expenses?

5 MS. KREBS: Yes. For the most part it's everyday
6 living expenses.

7 THE COURT: I will be glad to look at it.

8 Next item?

9 MS. MESIDOR: Your Honor, to the extent that counsel
10 represents it went to a money market account, we also have the
11 money market account. That shows an opening balance of \$3,990,
12 and then the amount added was \$4,875. So that \$15,000 is not
13 reflected in the money market account.

14 THE COURT: Well, not all of it anyway. We'll look at
15 it. We don't have to pursue it now. I am going to see it.

16 MS. MESIDOR: Absolutely, your Honor.

17 The second matter is we were given a sheet that I
18 presume was done by counsel that is supposed to be a flowchart
19 for the ease of the jury to follow from one item to the next
20 item.

21 However, the basic numbers that have been represented
22 here, specifically Mr. Carmona's net worth account, the
23 mortgage and home equity loan amount that they are indicating
24 here do not match the home mortgage and equity numbers that
25 have been provided to us by counsel. In addition, the home --

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1 THE COURT: So you just have to ask that question,
2 right? I am not going to be able to decipher it.

3 MS. MESIDOR: I understand that, your Honor. But to
4 the extent that there's other -- our only issue, your Honor, it
5 seems that the documentation we have been provided is
6 incomplete because the numbers are not matching up.

7 THE COURT: Then you ought to discuss it on cross.

8 MS. MESIDOR: OK.

9 THE COURT: What would you like me to do?

10 MS. MESIDOR: Your Honor, only to the extent I just
11 want to make sure that I have all the documentation.

12 THE COURT: That is a different question.

13 MS. MESIDOR: OK. So then to the extent that the
14 numbers that are on this flowchart are not being supported by
15 the documentation -- and, your Honor, again, we are looking at
16 four, five documents that don't match up here, not everything.

17 THE COURT: Yes.

18 MS. MESIDOR: I just want to make sure that I have
19 everything. That is number two.

20 THE COURT: All I can do is say ask him on cross.

21 MS. MESIDOR: Then the other issue is, as it relates
22 to our application, we had specifically requested to see
23 defendant STRIVE's insurance policy. The reason we had asked
24 to see defendant's STRIVE insurance policy, while we understand
25 that it is well settled in the law that punitive damages cannot

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1 be paid out of insurance, however, compensatory damages and
2 attorney's fees can be.

3 So, to the extent that the jury is led to believe that
4 the \$250,000 compensatory fees that they have already awarded
5 to the plaintiff is going to be paid directly from STRIVE when
6 they have an insurance policy that is going to cover that
7 amount, we wanted to be able to take a look at the certified
8 copy of the insurance policy so that we can make the
9 appropriate arguments and ask the appropriate questions on
10 cross.

11 THE COURT: I think it's fair to say that if the
12 STRIVE policy indemnifies for the compensatory damages, that
13 that's admissible. I don't know what the defendant's view is,
14 but that's my view.

15 MS. KREBS: Our view is that it is not admissible,
16 your Honor. Insurance coverage is typically not admissible
17 during trials. That would have come up during the main portion
18 of the trial. In fact, in trials that we've dealt with before
19 it has been ruled explicitly that the jury is not supposed to
20 consider insurance when it comes to the question of deciding on
21 an award. It's Federal Rule of Evidence 411 that deals with
22 insurance.

23 THE COURT: Have you read Mathie v. Fries, which is a
24 Second Circuit decision from 1997? If you read it, you will
25 see, and I'll read you the holding to make you feel better or

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1 worse, "A fact-finder can properly consider the existence of an
2 indemnification agreement as obviating the need to determine
3 whether a defendant's limited financial resources justify some
4 reduction in the amount that would otherwise be awarded in
5 punitive damages."

6 Now, what she is doing is essentially asking for just
7 that issue to be resolved. If you have an insurance policy,
8 which is going to indemnify any part of the compensatory
9 damages, then the jury is deserving to know that -- well, not
10 if it's the two that are out. But if it's STRIVE or Carmona
11 the jury is entitled to see that under Mathie, since it will
12 defray what it is they provided in the way of a verdict for
13 compensatories.

14 So there is nothing more I can tell you about that.
15 It is a fairly recent Second Circuit case. If you want to look
16 at it some more, I'll show you more. But that's what it says.
17 Take my word for it.

18 MS. KREBS: Your Honor, again, we still take the
19 position that it is not, but obviously we are going to comply
20 with your Honor's ruling.

21 THE COURT: Not my ruling. I just sit here reading
22 other cases, mostly from the circuit.

23 OK. It's done. What else?

24 MS. MESIDOR: Your Honor, one final issue. On the
25 flow charts that defendant proposes to give to the jury, it

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1 puts restricted and unrestricted funds all together. Your
2 Honor, for the purposes of clarification, unrestricted funds in
3 terms of gifts and contributions are those that have not been
4 given for any specific purpose. Case law indicates that
5 unrestricted funds in terms of being able to pay a judgment
6 against a not-for-profit organization are essentially fair
7 game, your Honor. So we would make an application to preclude
8 defendants from making any representation that somehow
9 contributions and gifts from donors all together, whether
10 restricted or unrestricted, should not be considered in terms
11 of the total worth of the not-for-profit.

12 THE COURT: What does the defendant have to say about
13 that? I thought we talked about this Friday, which, of course,
14 as the defendant points out, quite cogently, was a time when we
15 should have discussed this problem or these problems, and you
16 stood mute, unlikely as that is for you.

17 OK. What does the defendant have to say about this
18 unrestricted and restricted fund business?

19 MS. KREBS: Well, your Honor, the flowchart is merely
20 created to explain for the jury in a manner that is more easily
21 understandable sources of revenue and the forms of expenses.

22 During the testimony, the CFO is going to explain
23 what, if any, legally bound provisions there are with respect
24 to the category. With respect to those categories that there
25 are not binding, we are not going to say that. They are.

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1 THE COURT: I think that's fair. We will let the jury
2 make a decision. But I think what she says makes sense.

3 Are you ready for the jury, guys? I really hate to
4 keep them waiting. I don't know how long you are going to be.
5 But Bill would like to know if he's supposed to order them
6 lunch.

7 MS. MESIDOR: Your Honor, this is the end of
8 plaintiff's application. If we could just take a quick look at
9 the insurance policy, then we would be ready for the jury.

10 THE COURT: You have to answer my question. How long
11 do you think this testimony is going to take?

12 MS. KREBS: All told maybe about an hourish.
13 Somewhere in the neighborhood, in that neck of the woods.

14 THE COURT: You don't mean all told including cross,
15 do you?

16 MS. KREBS: No, I mean all told including my direct,
17 my three witnesses.

18 THE COURT: I guess you better take that lunch order.
19 That will give everybody a time to look at whatever they can
20 look at and I can put on my robe.

21 You can let me see whatever you think I should look at
22 in camera.

23 MS. KREBS: Your Honor, may I approach?

24 THE COURT: To make the defendant feel more
25 comfortable why don't you show the Mathie case to her.

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1 MS. KREBS: Your Honor, may I approach.

2 THE COURT: Yes. Absolutely.

3 Give it to her.

4 MS. KREBS: May I?

5 THE COURT: Give it back, though.

6 MS. KREBS: Yes, your Honor.

7 THE COURT: Ms. Krebs, what is it you want me to do
8 here?

9 MS. KREBS: Your Honor, shall I show you?

10 THE COURT: Come right up. Be my guest.

11 (Discussion off the record)

12 (Jury present)

13 THE COURT: Good morning, ladies and gentlemen. I'm
14 truly saddened that we have to bring you back after a long
15 weekend, although I guess that's the time when everybody comes
16 back. I hope you all had a good one.

17 What we are going to do here, as I think I suggested
18 Thursday, should not take long, even though I gather that the
19 United States is buying you another lunch. So whatever
20 happens, we'll probably be able to feed you, although with
21 sequestration you never know. It may not come up to the 22nd
22 or 23rd floor, but the odds are good.

23 This is an opportunity now to flesh out the punitive
24 damage aspect, and that's all there is that we are talking
25 about this afternoon -- or this morning, happily this morning,

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1 I'm sorry to have kept you waiting for an hour, but I think
2 it's valuable we've put most of the pegs in a row so that it
3 shouldn't take any longer than I had hoped.

4 I suppose the defendant is going to essentially spell
5 out what there is in the way of assets for the two defendants
6 for whom you found against, both STRIVE and Mr. Carmona, and
7 of course plaintiff will have the opportunity to cross.

8 OK. Ms. Krebs, we're ready when you are.

9 MS. KREBS: OK, your Honor. I call as a witness
10 Mr. Andrew Milton.

11 ANDREW MELTON,

12 called as a witness by the Defendants,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. KREBS:

16 Q. Good morning, Mr. Melton.

17 A. Good morning.

18 Q. What is your current position in connection with STRIVE?

19 A. I'm the chief financial officer of STRIVE.

20 Q. Just a brief, very brief background.

21 What is your highest level of schooling?

22 A. Bachelor's degree.

23 Q. In?

24 A. In accounting.

25 Q. And a brief history of your employment in the area of

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Melton - direct

1 accounting and financial areas?

2 A. I have been a CPA for over 20 years. I ran an accounting
3 firm in Detroit for many years, and I have now migrated to New
4 York and practice as a consultant and started at STRIVE in
5 March of this year as the CFO, the chief financial officer.

6 THE COURT: Probably sorry to have left Detroit.

7 THE WITNESS: As it seems, sir.

8 Q. You mentioned consultant. What do you mean by that?

9 A. Well, in New York, I specialize in nonprofit consulting as
10 a turnaround restructuring expert, and providing CFO-to-go
11 services as well as consulting services to nonprofits.

12 Q. Is STRIVE your only client?

13 A. No, it's not.

14 MS. KREBS: Your Honor, may I approach?

15 THE COURT: You may.

16 THE WITNESS: Thank you.

17 Q. Mr. Melton?

18 A. Yes, ma'am.

19 Q. I've handed you a document that is marked as PD-1.

20 A. Yes.

21 THE COURT: For identification. Right?

22 MS. KREBS: I'm sorry.

23 THE COURT: For identification?

24 MS. KREBS: For identification, yes.

25 I ask that this exhibit be admitted into evidence.

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Melton - direct

1 THE COURT: Any objection?

2 MS. MESIDOR: What is the basis, your Honor?

3 THE COURT: I didn't hear you, but I will assume it is
4 a no.

5 MS. MESIDOR: No. Thank you, your Honor.

6 THE COURT: Go ahead.

7 (Defendant's Exhibit PD-1 received in evidence)

8 Q. Mr. Melton, what is the document that has now been entered
9 into evidence as PD1?

10 A. This is the certified audit of STRIVE for the years 2011
11 and 2010.

12 Q. Just briefly, what does that mean? What is this document
13 functionally?

14 A. Organizations and companies will typically receive an
15 external audit by a CPA, certified public accounting firm to
16 provide assurance to third parties and the general public of
17 their financial position results of operations for a certain
18 time period. This is that document as it relates to STRIVE for
19 2011 and 2010.

20 (Continued on next page)

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Milton - direct

1 BY MS. KREBS:

2 Q. Now, I just want to take you through a couple points in the
3 report. Look at the page that is marked at the bottom, page
4 two?

5 A. Yes.

6 Q. Do you see that?

7 A. Yes, I have it.

8 Q. Just generally what is this page describing?

9 A. This is the statement of financial position or commonly
10 referred to as your balance sheet. It has two columns. One
11 for 2010 and one for 2011. It shows the total assets, total
12 liabilities, and the net worth if you will of the company.

13 Q. When you talk about total assets, what is included in total
14 assets?

15 A. They include cash investments, account receivables, loans
16 to employees, and property plant and equipment commonly
17 referred to as fixed assets.

18 Q. Now, I see a line for loan to employees. What is that in
19 reference?

20 A. STRIVE has a program whereby they extend loans to employees
21 that are in position of hardship, temporary hardship, and the
22 employee has the ability to obtain a loan from their employer
23 and we deduct payment out of their paycheck over a certain
24 period of time.

25 Q. Now, looking at under assets investments. It shows that

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Milton - direct

1 there was investment money in 2010 but none in 2011.

2 A. Yes.

3 Q. Could you explain that?

4 A. Well, at the end of 2010 they had approximately \$250,000 in
5 marketable securities. In 2011 they no longer had that amount.
6 It is related to a loan they had with Citibank that they
7 defaulted on and they reached a settlement whereby they applied
8 that -- those marketable securities to the balance of the loan
9 and there was a short fall in which the bank agreed to waive.

10 THE COURT: Do you have another copy for the Court by
11 any chance? Apparently not. Well, it is not the first time.

12 MS. MESIDOR: Your Honor, plaintiff has a copy if the
13 Court would like it.

14 MS. KREBS: Your Honor, I have an extra copy.

15 THE COURT: I know as I have said that I don't have
16 much to do here, but I would like to follow along.

17 MS. KREBS: Yes, your Honor. I am not sure what
18 happened. We have extra copies. May I approach?

19 THE COURT: Thank you.

20 BY MS. KREBS:

21 Q. I am sorry. You were speaking about the defaulting on the
22 credit line.

23 A. Yes. They had a workout plan whereby they applied the
24 balance in the marketable securities to the balance of the
25 loan, which was 349,000, the difference that the bank agreed to

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Milton - direct

1 waive.

2 Q. As of today, does STRIVE have any investments or
3 securities?

4 A. No, they do not.

5 Q. As of today does STRIVE from have any line of credit?

6 A. No, they do not.

7 Q. You made a reference to fixed assets?

8 A. Yes. Fixed assets are property plant and equipment that
9 STRIVE has on their books that they use in their day-to-day
10 operations.

11 Q. Now, does STRIVE own any real property?

12 A. Yes, they do. They own the assets that I identified in
13 detail as equipment and software, furniture and fixtures and
14 lease hold improvements.

15 Q. Now, when you say "lease hold improvements," do you they
16 own any not internal property but real estate property?

17 A. They do not own any hard assets or real estate.

18 Q. Now, when you mention lease holds, what does that mean?

19 A. Lease hold improvements relate to the office that STRIVE
20 occupies. Many years ago when they leased the office, it
21 needed significant improvements to make it suitable for them to
22 occupy the space. As is typical when you lease commercial
23 entity, any improvements you make goes on your books.

24 Improvement, however, they stay when you leave. You don't get
25 to take them. You don't get to leverage them or anything with

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Milton - direct

1 them.

2 Q. Can you explain some categories of what would be considered
3 a lease hold improvement that is carried on the books as an
4 asset?

5 A. Replacing carpet, replacing drywall, ceilings, fixtures,
6 light fixtures, bathroom improvements. Anything that attaches
7 to the physical structure of the office.

8 Q. Now, I guess turning to page 3, what were the results of
9 operations for STRIVE for 2010?

10 A. The bottom line for 2010 STRIVE lost money to the tune of
11 \$144,484 and for 2011 they lost money to the tune of \$101,713.

12 MS. KREBS: Your Honor, may I approach?

13 THE COURT: You may.

14 THE WITNESS: Thank you.

15 Q. I have put in front of you a document that has been marked
16 as PD-2 for identification.

17 A. Yes.

18 MS. KREBS: Your Honor, I request it be moved into
19 evidence.

20 THE COURT: I haven't seen it, but is there any
21 objection?

22 MS. KREBS: Your Honor, may I approach and give you a
23 copy?

24 THE COURT: You may.

25 MS. MESIDOR: I don't have a copy. Our only objection

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Milton - direct

1 is lack of foundation, your Honor.

2 THE COURT: You don't want it in. It is all right
3 with me. We'll take it. Is probably really what she wants.
4 Go ahead. Admitted.

5 (Plaintiff's Exhibit PD-2 received in evidence)

6 BY MS. KREBS:

7 Q. Mr. Milton.

8 A. Yes, ma'am.

9 Q. Can you please identify the document that is in front of
10 you that is now in evidence as document PD-2?

11 A. These are the internally prepared financial statements for
12 STRIVE for 2012.

13 Q. Now, I see the first two pages say balance sheet. The last
14 two pages say statement of revenue and expense.

15 A. Yes.

16 Q. This document looks a little different than the last
17 exhibit. Could you explain the difference?

18 A. Yes. The previous document was the certified audit. It
19 would consist of this document, this exact document, for 2011
20 and 2012 given to the auditors. They perform their audit.
21 They reform it into that document for presentation to the
22 public and third parties. This is the internally prepared
23 document for 2012, which is in the process of being audited by
24 the external auditors and will ultimately be in the same
25 format.

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Milton - direct

1 THE COURT: Are these calendar years?

2 THE WITNESS: Yes, your Honor.

3 Q. Just to confirm. These are numbers for the entirety of
4 calendar year 2012?

5 A. Yes, ma'am.

6 Q. You said that it is currently being audited right now by
7 the auditors?

8 A. Yes, ma'am.

9 Q. How close is it to final?

10 A. It's -- it should be done by the end of the month.

11 Q. With respect to these numbers that have been reviewed, have
12 you received any feedback from the auditors with respect to the
13 accuracy of these numbers?

14 A. Yes. We do not expect any audit adjustments.

15 Q. Based on and looking at this document what were the result
16 of operation for 2012?

17 A. The bottom line for 2012 is that STRIVE made money to the
18 tune of \$194,750. That's a surplus.

19 Q. That was after December 31st, 2012?

20 A. Yes, ma'am.

21 Q. What, if any, obligations are you aware of that would have
22 come upon STRIVE immediately beginning in 2013?

23 MS. MESIDOR: Objection.

24 THE COURT: Overruled.

25 A. The results related to that surplus would be indicated in

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Milton - direct

1 the cash accounts at the end of the year which is approximately
2 120, \$130,000, which would have been designated for the next
3 payroll and the next week or so as well as the first of the
4 month rent paying, substantial rent payments, employee benefits
5 and the like.

6 Q. Can you please approximate the dollar amount that would
7 have been going out in and around the first week of 2013 for
8 those items that you just mentioned?

9 MS. MESIDOR: Objection.

10 THE COURT: Sustained. I think he just did that.

11 MS. KREBS: I asked for a specific dollar figure, your
12 Honor.

13 THE COURT: If he has it.

14 Q. An approximate dollar figure?

15 A. It would -- the payroll is approximately 70,000. We have
16 22,000 in rent. We've got various other accounts, various
17 other items. So slightly over a hundred thousand.
18 Approximately \$100,000.

19 MS. KREBS: May I approach, your Honor?

20 THE COURT: You may. You really don't have to ask me
21 to approach. When I think you are going to stab a witness, and
22 it doesn't appear to me that you will be scaring him, so you
23 don't even have to ask.

24 Unless you feel differently about that?

25 THE WITNESS: No. Not at all, your Honor.

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Milton - direct

1 MS. KREBS: I am a pussy cat, your Honor.

2 THE COURT: No question about that.

3 MS. MESIDOR: Your Honor, may we know what document
4 has been given to the witness so we can follow along?

5 THE COURT: You are certainly entitled to.

6 MS. MESIDOR: Thank you.

7 THE COURT: You apparently have that?

8 MS. MESIDOR: Yes. I do have that document. Thank
9 you, your Honor.

10 MS. KREBS: Your Honor, we ask this document be
11 admitted into evidence.

12 THE COURT: Any objection?

13 MS. MESIDOR: No objection, your Honor.

14 THE COURT: PD-3, is that what we're up to?

15 MS. KREBS: Yes, your Honor.

16 THE COURT: Will be admitted.

17 (Plaintiff's Exhibit PD-3 received in evidence)

18 BY MS. KREBS:

19 Q. Mr. Milton, what is this document that is just marked and
20 entered into evidence as PD-3?

21 A. This is the current year year-to-date financial statements
22 for 2013. However, I believe this is a previous version.

23 MS. MESIDOR: Your Honor, to the extent that the
24 witness just indicated that this is a previous version of this
25 time period, we would ask that the document be taken away from

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Milton - direct

1 the jury until the most accurate --

2 THE COURT: That this document be what?

3 MS. MESIDOR: That the document be taken away from the
4 jury until the correct and most up to date version is provided.

5 THE COURT: Yeah. I think that is fair. Will you put
6 the last PD-3 up on the banister in front of you and we'll try
7 to straighten this out. I have two page ones. Actually, I may
8 have two copies. That may be what I have. No, I just have two
9 versions. There must be one version.

10 Why don't you look at this and see if one of them is
11 the latest version that we have so we use that one.

12 THE WITNESS: There are two documents. The entire
13 package is not the latest version.

14 THE COURT: Are we going to get to the latest version?

15 THE WITNESS: I can speak to it based on the flow
16 chart.

17 MS. MESIDOR: We would object to that, your Honor. We
18 have no way of following or otherwise verifying or looking for
19 ourselves as to what the witness is testifying to.

20 THE COURT: What are the differences? Can you tell us
21 what they are? Listen, it is your problem.

22 MS. KREBS: Your Honor, we do have, which is what I
23 thought was most recent version that was handed up, but I have
24 it on an e-mail if your Honor would permit us to take two
25 minutes to print out the most recent one. We can resolve this

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Milton - direct

1 problem very quickly.

2 THE COURT: Sure. Can we all sit and listen or
3 watch? We're not going to go back and forth in and out. That
4 is what I find time-consuming and useless, but you can print it
5 out.

6 MS. KREBS: May I consult with your law clerk, your
7 Honor?

8 THE COURT: Yeah. He certainly knows more than I do.
9 Is there anything else we can do in the meantime?

10 MS. KREBS: Your Honor, the next exhibit that I have
11 is a jury aide and we can begin to discuss that, which is based
12 upon the document that will be arriving momentarily.

13 THE COURT: Very well. Let me take back my exhibit,
14 Mr. Milton. I gave you my exhibit.

15 BY MS. KREBS:

16 Q. Mr. Milton?

17 A. Yes, ma'am.

18 Q. The document --

19 THE COURT: I assume that the plaintiff has seen this?

20 MS. KREBS: The jury aide, yes, your Honor.

21 MS. MESIDOR: Your Honor, I don't have any objection
22 so long as we have a representation on the record that the jury
23 aide is based on the most recent PD-3 and not the one that was
24 previously given to the jury.

25 MS. KREBS: I will make that representation, but I

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Milton - direct

1 will ask the witness if that is --

2 A. Yes. That would be correct.

3 MS. MESIDOR: And we also want to be sure this is for
4 demonstrative purposes only because I believe the document was
5 prepared by counsel.

6 THE COURT: You believe what?

7 MS. MESIDOR: That the document was prepared by
8 counsel.

9 THE COURT: It is not going to the injury room. It is
10 just an aide now for them to look at. You don't have to worry
11 about who prepared it as long as it is authentic. As long as
12 the CPA tells us about it.

13 MS. MESIDOR: No objection, your Honor.

14 THE COURT: Mark it for identification PD-4. We'll
15 have a hiatus of PD-3.

16 MS. KREBS: Thank you, your Honor.

17 BY MS. KREBS:

18 Q. Mr. Milton.

19 A. Yes, ma'am.

20 Q. The document that will be arriving momentarily, the
21 up-dated, current PD-3, can you please identify first what it
22 is?

23 A. That document will be similar to the document to the
24 previous years. It represents the results of operation for the
25 first seven months of this year.

D936JOH2

Milton - direct

1 Q. First seven months through July?

2 A. Through July.

3 Q. Have you closed the books or do you have available yet for
4 August of 2013?

5 A. No. Those will not be available typically until the 10th
6 of the month or so.

7 Q. Now, looking at the document that has been marked as PD-4
8 for identification, could you please first just briefly
9 describe what this chart is?

10 A. For clarification this chart was actually prepared by
11 myself so it was prepared by me. This represents -- this is a
12 flow chart representation of the profit and loss statement that
13 you will be receiving for the first seven months of this year
14 to July 31st.

15 Q. So looking at the first column where it says "revenues,"
16 could you please explain again just generally what that column
17 is explaining?

18 A. That represents all the monies received by STRIVE for the
19 first seven months of this year by category.

20 Q. Each box is a different category?

21 A. Yes.

22 Q. I would like to go through them one by one. The first box
23 reads, Direct public support, individuals, corporations and
24 board members. Could you please explain to the jury what that
25 source of revenue is?

D936JOH2

Milton - direct

1 A. Those would represent unincumbered direct contributions
2 from individuals and companies and from board members for
3 STRIVE's general operating use.

4 Q. When you say unincumbered, what do you mean by that?

5 A. No strings attached.

6 Q. Now, the second box says, Indirect public support
7 foundations and trusts. Could you please explain that
8 category?

9 A. That represents typically encumbered money or money given
10 by foundations and trusts to STRIVE for certain purposes.

11 Q. When you say it is given for certain purposes, how is it
12 given that that creates for certain purposes?

13 A. Usually there is a contractual arrangement in the way of a
14 grant award or grant agreement whereby they expend the funds to
15 STRIVE on the condition that you use them for a spelled out
16 specific purpose, contractually bound or legally bound.

17 Q. Are these programmatic purposes, background purposes, or
18 anything else?

19 MS. MESIDOR: Objection.

20 THE COURT: Overruled.

21 A. Yes. Foundations typically fund programs. Occasionally
22 we'll receive general operating funds, but for the most part
23 they are specifically related to doing good works for our
24 population.

25 Q. The third box says, Program income federal, state and city

D936JOH2

Milton - direct

1 contract service. Could you please explain that source of
2 income?

3 A. Those are actual contracts -- government contracts that we
4 have as a result of typically a bidding process in response to
5 an RFP to provide certain programs to our population of youth
6 or offenders or what have you. They are contractual agreements
7 to perform these services, contractually bound.

8 MS. KREBS: Your Honor, may I briefly interrupt to
9 hand out PD-3?

10 THE COURT: You may. This is to replace PD-2? It was
11 incorrect or not final. I think it was two.

12 MS. KREBS: Three, your Honor.

13 BY MS. KREBS:

14 Q. Mr. Milton I just handed you what is now in evidence as
15 PD-3, which is stapled into two parts.

16 THE COURT: Why don't we make it 3A just in case
17 anything goes wrong. We had three already and this is the
18 up-to-date one, right?

19 MS. KREBS: Thank you, your Honor.

20 Q. Now that we've given those documents, can you please
21 identify those for the record and confirm that is the correct
22 version?

23 A. Yes. These are the financial statements for STRIVE for the
24 first seven months of 2013, including the balance sheet and the
25 profit and loss statement.

D936JOH2

Milton - direct

1 Q. Now, as we're going through the flow chart for the
2 revenues, could you please just identify the source in PD-3A
3 for where this information can be found?

4 A. Well, if you look in the revenue column under the first
5 box, the \$237,000 that directly relates to the first page of
6 the profit and loss statement, it gives you a breakdown of
7 three categories that total that for \$237,000. So on and so
8 forth down that row each category represents a balance on the P
9 and L, profit and loss statement.

10 Q. Where does the listing of the revenue on the actual profit
11 and loss sheet on PD-3 A, where does that end?

12 A. The total revenue ends on the line that says total income
13 of \$2,732,170. That is the slightly past halfway on page 1 and
14 it agrees with the total in the first column from the flow
15 chart.

16 Q. Thank you, Mr. Milton. I want to return back to the flow
17 chart to explain the remaining categories of revenue. We left
18 off at government contracts I explained those were actual
19 government contracts with government agencies. The next
20 category is program service revenue, which represents direct
21 contracts to provide direct services to a noncorporate entity
22 in the community. Specifically this one is to provide job
23 placement, job recruitment for the Tiago or East River Plaza.

24 The next category is Women's Fundraising Empowerment
25 Luncheon. We put on an actual large event this year, the

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Milton - direct

1 women's Empowerment Luncheon. It raised approximately
2 \$101,000. The difference of a couple thousand dollars was
3 miscellaneous fundraising efforts for total of 103,000. That
4 ties into the revenue category on page 1.

5 Q. Now, the fundraising category --

6 A. Yes.

7 Q. -- in terms of the purpose for which those monies were
8 donated through the luncheon itself, how would you categorize
9 those funds?

10 A. The purpose of the event was to raise money to provide an
11 enhancement of our women services to women essentially. Those
12 were especially designated for our programs to assist women
13 with our workforce efforts.

14 Q. So in terms of your encumbered versus unincumbered
15 dichotomy that you have been where would that fall?

16 A. We would view those as encumbered for a special purpose.

17 Q. Then the last box that says "other rent income," what is
18 that?

19 A. That is space within our office that we sublease to another
20 entity.

21 Q. So that amount is for the total of rent income that you've
22 gotten through July of 2013?

23 A. Yes.

24 Q. So now in looking at all of the different categories of
25 revenue and using your encumbered versus unincumbered, how much

D936JOH2

Milton - direct

1 of the revenue that has come in falls into the unencumbered
2 versus encumbered categories?

3 A. If you look down the list basically speaking you are
4 talking the first category of direct contributions that is
5 designated for general operating or not encumbered. Then you
6 look all the way down to program service to 49,000. That is
7 just for program service revenue. That would go into general
8 operating. Then you look all the way down to rent income, the
9 other \$20,000 or so.

10 Q. So the rest of it -- the 660,000, the 1.65 million, the
11 103,000 -- is all encumbered?

12 A. That would be considered encumbered for special purposes.

13 Q. Before turning to the expenses column, I just want to go
14 back to Exhibit PD-3A. I specifically want to go to the
15 balance sheet. I want to draw your attention to the top of the
16 first page where it identifies the different accounts.

17 A. Yes.

18 Q. Do you see that?

19 A. Yes, ma'am.

20 Q. I just want to go through each one very briefly so you can
21 explain what each account is for and why you have different
22 ones.

23 A. The general checking is for general operating purposes,
24 day-to-day operations. The stipend checking is used for a
25 specific within a program to provide stipends and incentives to

D936JOH2

Milton - direct

1 the participants. The federal checking is used for federal
2 government contracts that requires the funds to be segregated.
3 The payroll checking is used for payroll in its entirety. The
4 Dazny was a grant, a contract to perform improvements for the
5 office. It required us to have a separate bank account to
6 segregate those funds. The money market fund is used for
7 monies that we placed there that we're not going to use
8 immediately. So it is not to get it used in general operating,
9 but will be used shortly thereafter. Petty cash is petty cash
10 around the office.

11 Q. Now, you indicated that payroll is where all the payroll
12 comes out of?

13 A. Yes, ma'am.

14 Q. The things like rent and others, where would that come out
15 of?

16 A. General operating -- general checking.

17 Q. General checking.

18 By the way, does STRIVE have any endowment or other
19 sources of income other than the revenue that you listed here?

20 A. We have no endowments, ma'am. All the sources of revenue
21 are listed.

22 Q. Now, looking back at the flow chart, I want to turn your
23 attention to the expenses side of the page. Could you just
24 very briefly explain generally what we're looking at on that
25 side?

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Milton - direct

1 A. That represents all the dollars spent by STRIVE for the
2 first seven months of this year by category.

3 Q. In looking at the profit and loss document portion of
4 PD-3A, where would we find the backup to represent the flow
5 chart?

6 A. This would start near the bottom of page 1 where it says
7 "cost of goods sold." Those numbers have been somewhat
8 reclassified for the flow chart. However, the total at the
9 bottom of the 2,723,533 directly would tie into the total of
10 the two expense categories on the profit and loss for cost of
11 sales and total expense.

12 Q. Going to the flow chart. I would like to go briefly to
13 each category of expense that STRIVE has or has had in the past
14 seven months during 2013. The first one says cost of sales,
15 subcontracts, other program costs. What does that represent?

16 A. Subcontracts are entities that we hire to assist us in
17 providing the programs to the recipients. It is direct pass
18 through costs. They are out there in providing service and we
19 provide them to do so. Other program costs are related to that
20 program like supplies, things that we would provide to the
21 participants, etc.

22 Q. Now, the second box says cost of sales, affiliate subaward.
23 What does that represent?

24 A. Same principle as the cost of sales subcontracts except it
25 goes to our affiliates and other locations that provide the

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Milton - direct

1 same type of service for us in those programs.

2 Q. Now, these two categories, where does STRIVE get the funds
3 in order to provide them to the subcontractors, subaward.

4 A. These would primarily come from the foundation and trusts
5 as well as the program income from federal, state and city
6 contracts.

7 Q. Part of that money that comes to you goes through them?

8 A. Passes directly through the subs and affiliates.

9 Q. The third box says other operating expenses.

10 A. Yes. We combine several categories for that line item --
11 business expenses, operational insurance, travel insurance,
12 meetings and alike.

13 Q. So what kind of business expenses are we talking about in
14 that category?

15 A. If you look on page 2 of the document.

16 Q. Of the document, are you referring to the --

17 A. The profit and loss statements. Business expenses are at
18 the top. Bank charges, credit card fees and registration fees.
19 If you look down to operations, that would be half way down the
20 page, the total of all those line item book subscriptions,
21 postage, mailings, printing, telephone total 56,428. You keep
22 going down to the three quarters of the way down the page for
23 other types, you see insurance there. That is included. You
24 keep going down to the bottom of the page where you see the
25 travel insurance and meetings. Travel is included,

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Milton - direct

1 conferences, conventions, meals, and travel on the last page.

2 All of that would be included there as well.

3 Q. One question on that. One of the categories is insurance?

4 A. Yes.

5 Q. What kind of insurance does STRIVE have?

6 A. We have all the required insurance you would typically see
7 in a business. We have general liability. We have got
8 insurance for directors and officers and alike.

9 Q. Do you have any insurance that could potentially cover
10 STRIVE for this proceeding?

11 A. It is my understanding based on review of the policy, not
12 being an insurance professional, that we're covered --

13 MS. MESIDOR: Objection. Your Honor, if he is not an
14 insurance professional and cannot testify as to whether any of
15 the insurance is going to be covered in these proceeding then
16 we would move to strike any testimony regarding same.

17 THE COURT: Well, tell us about your experience in the
18 world of insurance.

19 THE WITNESS: Well, I am a CPA. I have audited over
20 300 companies, including the insurance categories. I would
21 think that I will be able to interpret basic insurance policy
22 by review. I have reviewed hundreds of them.

23 THE COURT: Did you review this policy as well.

24 THE WITNESS: Yes, on a regular basis. It is part of
25 my job of risk management.

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Milton - direct

1 THE COURT: I will take it. Overruled.

2 A. It is my understanding and belief that we're covered for
3 the compensatory aspect of the results of this trial.

4 THE COURT: Do you want to withdraw your objection?

5 MS. MESIDOR: I withdraw my objection, your Honor.

6 THE COURT: You what?

7 MS. MESIDOR: I withdraw my objection, your Honor.

8 BY MS. KREBS:

9 Q. Is there any coverage for punitive damages?

10 A. To my understanding, there is not.

11 Q. Moving down to professional services, the fourth box on the
12 expenses flow chart.

13 A. Yes.

14 Q. What does that cover?

15 A. That covers outside accountants, auditors, and consultants
16 like myself, as well as the CPA firm that does the audit.

17 Q. The next box that says facilities and equipment, could you
18 explain that, that category of expense?

19 A. That would be near the middle of page 2 under facilities
20 and equipment. It shows the depreciation and repair and
21 maintenance, rent. All the occupancy-type expenses would be
22 included there.

23 Q. What is STRIVE's annual rent?

24 A. The annual rent for STRIVE -- well, it is approximately --
25 the year-to-date rent as of July 31st was \$156,000. So spread

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Milton - direct

1 over certain months. The actual annual amount would be for
2 last year was -- last year was approximately \$260,000.

3 Q. That of course doesn't include the slight offset that you
4 get from the --

5 MS. MESIDOR: Objection.

6 A. That is correct.

7 THE COURT: Do you have an objection?

8 MS. MESIDOR: Yes, your Honor.

9 THE COURT: Overruled.

10 Q. Could you answer?

11 A. That is correct.

12 Q. Then the next box is the fundraising expense. What is
13 that?

14 A. That would exclude the expenses directly related to the
15 cost of putting on the events for the fundraiser. In this fact
16 it would have been the Women's Empowerment Luncheon.

17 Q. The last box salary, wages and fringe.

18 A. That is the direct cost to pay for or employees, wages and
19 benefits.

20 Q. So now the bottom line again. What were the results of
21 operation thus far to the end of July in 2013?

22 A. Year to date July 31st, 2013, STRIVE had an income of
23 \$8,638, and that is a surplus.

24 MS. KREBS: I have no further questions of this
25 witness, your Honor.

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Milton - direct

1 THE COURT: Any cross?

2 MS. MESIDOR: Yes, your Honor.

3 CROSS-EXAMINATION

4 BY MS. MESIDOR:

5 Q. Good morning, Mr. Milton.

6 A. Good morning.

7 Q. Mr. Milton, STRIVE just doesn't have \$8,638 in its bank
8 accounts, correct?

9 A. Sorry.

10 Q. The \$8,638 that you mentioned that was a surplus, that is
11 not the balance of STRIVE's bank account, correct?

12 A. No, ma'am.

13 Q. Now, what this chart is actually representing is all the
14 money that came in so far in 2013 and all the money that has
15 exited so far in 2013 as of July 31st, is that correct?

16 A. Yes, ma'am.

17 Q. It does not take into consideration the years of surplus or
18 losses that already exists that STRIVE has, correct?

19 A. No, ma'am.

20 THE COURT: 2010 and 2011 did it have eye surplus like
21 this \$8,000 that you know of that you gave us?

22 THE WITNESS: No, sir. It had deficits of that
23 144,000 for 210 and the 100 -- if I remember.

24 THE COURT: Nine.

25 THE WITNESS: Yes. Those two amounts would have been

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Milton - cross

1 on page 3 of the certified audit report, 144,484 for 2010.

2 That was a deficit. And then 2011 it would have been 101,713
3 deficit.

4 BY MS. MESIDOR:

5 Q. Now, Mr. Milton, going back to Defendant's PD-1 to the
6 third page where the 101 number and the 144 number are
7 reflected, do you see that?

8 A. Yes, ma'am.

9 Q. Now, those losses are reflected in the total net assets?

10 A. Yes, ma'am.

11 Q. That is at the end of the year that shows \$762,655, correct
12 for 2011?

13 A. Yes, ma'am.

14 Q. Those numbers -- that loss of 144,000 is reflected in the
15 net assets of the end of the year for 2010 of \$864,368, is that
16 correct?

17 A. Yes, ma'am.

18 Q. You previously mentioned that STRIVE has directors and
19 officers insurance. What is the insurance policy on that?
20 What is the policy?

21 A. I am sorry?

22 Q. What is the amount of the policy?

23 MS. KREBS: Objection, your Honor.

24 THE COURT: If you know you can answer.

25 A. I can -- I don't know the actual limits that it will cover

D936joh2

Milton - cross

1 if that is what you are asking.

2 Q. Yes.

3 A. No, I don't know the limits.

4 Q. But the insurance policy also covers attorneys fees, is
5 that correct?

6 A. I don't know specifically that that is correct or not,
7 ma'am.

8 Q. Are the attorneys' fees that you accumulated in this
9 litigation reflected in any the balance sheets as you presented
10 to us?

11 A. No, ma'am.

12 Q. So where are those reflected?

13 A. We have not incurred any attorney fees to date, ma'am.

14 Q. Now, you have previously testified about the restrictive
15 versus unrestricted cash. Do you recall that testimony?

16 MS. KREBS: Objection. Misstates the testimony.

17 THE COURT: Sustained. Do you want to rephrase it?

18 MS. MESIDOR: Sure.

19 Q. You have previously given testimony regarding encumbered
20 fund versus unencumbered funds. Do you recall that testimony?

21 A. Yes, ma'am.

22 Q. Now, in the flow chart that you previously given to the
23 jury, you had previously indicated that the 237,424 is
24 unencumbered funds, is that correct?

25 A. Yes, ma'am.

D936joh2

Milton - cross

1 Q. That is the revenue that you have accumulated of
2 unencumbered funds so far, is that correct?

3 A. No. That is the revenue that has come in the door that has
4 been used for general operating purposes and not a designated
5 purpose.

6 Q. Right. But that is what has been generated as revenue so
7 far up until July 31st, 2013?

8 A. Yes, ma'am.

9 Q. The program service you had indicated that that also is
10 unencumbered and that is 49,147, is that correct?

11 A. Yes, ma'am. That is come in and used for general operating
12 purposes. Not a specifically encumbered designated purpose.
13 Yes, ma'am.

14 Q. The rental income is 20,615?

15 A. Yes, ma'am.

16 Q. Now, STRIVE and affiliates pay an amount to STRIVE,
17 correct?

18 A. STRIVE affiliates in some instances they pay a service fee.
19 Yes, ma'am.

20 Q. In order to become affiliates, they also pay a fee, is that
21 right?

22 A. Again, in some instances they do.

23 Q. I am going to draw your attention to PD-3A. Do you have it
24 before you?

25 A. Yes, ma'am.

D936joh2

Milton - cross

1 Q. In the section that is marked "total income," the \$2.7
2 million number, do you see that there?

3 A. Yes, ma'am.

4 Q. Do you see the section marked total expense on page 3 for
5 the \$1.5 million number?

6 A. Yes, ma'am.

7 Q. Both of these numbers are accurate numbers, correct?

8 A. Yes, ma'am.

9 Q. Going to PD-2, which is the balance sheet at the end of
10 2012, do you see that?

11 A. Yes, ma'am.

12 Q. The \$1.140 million number is the total assets, is that
13 correct?

14 A. Yes, ma'am.

15 Q. The total liability is reflected on the second page, which
16 is the \$183,489, number, is that correct?

17 A. Yes, ma'am.

18 Q. So the total net assets of 2012 are approximately 957,000,
19 isn't that correct?

20 A. That would be correct and it includes those net fixed
21 assets that most of which don't belong to us.

22 Q. You said that it includes net fixed asset that don't belong
23 to you?

24 A. The fixed assets including most of which don't belong to us
25 for the lease hold improvement category.

D936joh2

Milton - cross

1 Q. I understand that you explained what the lease hold
2 improvement category were and my recollection of your testimony
3 was that it was the amount that STRIVE had improved upon the
4 building in order to make it suitable for them to use the
5 space, is that correct?

6 A. Yes. Accounting principles require that we book those, but
7 they don't belong to us?

8 Q. However, they are counted to you as assets, isn't that
9 correct?

10 A. Accounting purposes require we book them as assets but
11 again they don't belong to us and we couldn't do anything with
12 them.

13 Q. Sir, is it your testimony that your attorneys have not
14 proffered to you any bill or invoice for their services?

15 MS. KREBS: Objection.

16 THE COURT: You can answer.

17 A. My -- the question you asked me was?

18 Q. I would like you to focus on the question that is before
19 you right now.

20 A. Sure, ma'am.

21 Q. Do you need me to restate it?

22 A. No, ma'am.

23 Q. What is the answer to that question, sir?

24 A. We have not received invoices thus far this year for
25 attorney fees, no.

D936joh2

Milton - cross

1 Q. Does your insurance company give you any documentation to
2 reflect any claims or any monies paid on your behalf?

3 A. They have not thus far, ma'am.

4 Q. The assets and liabilities as you have testified to them
5 are also reported in your 990, is that correct?

6 A. Yes, ma'am.

7 Q. Do you have your insurance policy with you here today, sir?

8 A. No, ma'am.

9 Q. We don't have any documentation of what the policy covers
10 and doesn't cover, sir, with you here today?

11 A. I do not have that in my possession, ma'am.

12 MS. MESIDOR: One moment, your Honor, to take a look
13 at my notes and confer with my co-counsel. I may be finished
14 with my cross.

15 THE COURT: Very well.

16 Q. Final question, Mr. Milton. For the year 2012 were you
17 given any invoices by your attorneys for services rendered for
18 the year 2012?

19 A. I was not here in 2012, but I will reference the document
20 and look for the line item for legal fees and it does appear
21 there is \$2,506 expended for legal fees in 2012. I am
22 uncertain as to who that went to and what the purpose was,
23 ma'am.

24 MS. MESIDOR: No further questions, your Honor.

25 THE COURT: Any redirect?

D936joh2

Milton - cross

1 MS. KREBS: Very, very briefly, your Honor.

2 REDIRECT EXAMINATION

3 BY MS. KREBS:

4 Q. You were asked on cross-examination about net assets and
5 moneys that you have in the bank. Do you recall those
6 questions?

7 A. Yes, ma'am.

8 Q. Of the money that you are aware of at least through the end
9 July of 2013 in the bank, how much of that was encumbered
10 versus unencumbered percentage-wise based on your knowledge?

11 A. Approximately 90 percent, ma'am.

12 Q. 90 percent was which, encumbered or unencumbered?

13 A. Encumbered.

14 Q. Thank you.

15 You were also asked by opposing counsel about service
16 fees by affiliates?

17 A. Yes, ma'am.

18 Q. To the extent that there was any such income from service
19 fees, where would that be reflected in the categories?

20 A. If you look at the July financial statement middle of the
21 first statement of the affiliate service revenue \$8,730.80 for
22 the first seven months of 2013.

23 Q. In terms of the flow chart where was that included within
24 the flow chart categories that you had identified?

25 A. That would be included in program income.

D936joh2

Milton - redirect

1 Q. And you were asked --

2 A. So I --

3 Q. What is a 990?

4 A. 990 is the tax return that is used for nonprofits. That is
5 the number associated with that form.

6 Q. What, if any, documents are used as the basis to prepare
7 the 990?

8 A. The financial statements are used for the basis of
9 preparing that tax return. All the documents we have been
10 reviewing today.

11 Q. The 990, what is the last 990 that has been filed thus far
12 by --

13 A. 2011.

14 Q. Based on that financial audited financial statement you
15 provide?

16 A. Yes, ma'am.

17 Q. You testified during direct that the next audited financial
18 statement for 2012 was going to be completed by the end of the
19 year?

20 A. Yes, ma'am.

21 (Continued on next page)

22

23

24

25

D93njoh3

Melton - redirect

1 Q. At what point would a new, a 994 2012 be generated
2 thereafter?

3 A. Shortly thereafter.

4 MS. KREBS: Thank you. No further questions.

5 THE COURT: You are excused.

6 Thank you very much.

7 (Witness excused)

8 THE COURT: What is next?

9 MS. KREBS: I call Philip Weinberg to the stand.

10 THE COURT: Is this your only other witness?

11 MS. KREBS: One last witness, I have Mr. Carmona.

12 THE COURT: One last witness, and Mr. Carmona, that is
13 two witnesses? Or one more, that is Mr. Carmona?

14 MS. KREBS: I have Mr. Weinberg and then Mr. Carmona
15 and that is it.

16 PHILIP WEINBERG,

17 re-called as a witness by the Defendants,

18 having been previously sworn, testified as follows:

19 THE COURT: You are still under oath to tell the
20 truth.

21 THE WITNESS: Understood. Thank you.

22 THE DEPUTY CLERK: Be seated.

23 DIRECT EXAMINATION

24 BY MS. KREBS:

25 Q. Good morning, Mr. Weinberg.

D93njoh3

Weinberg - direct

1 A. Good morning.

2 Q. You have been here for the testimony by Mr. Melton,
3 correct?

4 A. Correct.

5 Q. I am not going to go over all of the nuts and bolts of the
6 finances. I would like you to just give a description, big
7 picture of STRIVE's financial position.

8 MS. MESIDOR: Objection, your Honor.

9 THE COURT: Overruled.

10 A. It has been a long struggle for STRIVE financially. We
11 have had deficits in two of the last three years. We struggle
12 to make many payments. Such as every two weeks we need to make
13 payroll, and it is often a struggle for us to identify the
14 funds to use to pay for our employee salaries to pay rent each
15 month, to pay health insurance. We are very much like a family
16 that lives paycheck to paycheck.

17 MS. MESIDOR: Objection, your Honor.

18 THE COURT: Overruled.

19 Q. You have identified some different challenges that you have
20 had in --

21 THE COURT: He testified to that last week. I don't
22 know why it should bother you this week. Never mind. Don't
23 answer it. I lost my head.

24 BY MS. KREBS:

25 Q. How did you ever overcome some of those challenges at the

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Weinberg - direct

1 times that you were facing them?

2 A. Well, it is tough to operate in a deficit and not have an
3 endowment and not have a reserve, so we would take
4 extraordinary measures. We had to be crafty and creative.

5 We would not pay bills until the very last possible
6 moment to maintain cash on hand. We would hold paychecks.
7 Those of us in the senior positions would not cash our
8 paychecks until we were able to meet our other obligations.

9 Q. When you say those in senior management, which individuals
10 in particular are you referring to today?

11 A. There are only three individuals who we would ask to hold
12 paychecks, myself, Rob Carmona, and Lisa Stein.

13 Q. Any other matters in which you overcame challenges of the
14 financial struggles?

15 A. Well, Rob and I both took a voluntary pay cut for chunks of
16 2012 and 2013. Understanding that we had other bills to pay,
17 we reduced our salaries accordingly.

18 Then, frankly, all of that wouldn't have been enough.
19 We relied upon generous donations from our board of directors
20 to help us overcome extraordinarily challenging times when
21 frankly we had nowhere else to cut, we had no sources of money
22 to tap into. Were it not for those generous moments that we
23 had, I am not sure STRIVE would have survived.

24 Q. Mr. Weinberg, in light of the jury's decision last week,
25 what, if any, changes will you be implementing at STRIVE?

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1 MS. MESIDOR: Objection.

2 THE COURT: Yes. Sustained.

3 It is a little early for that.

4 MS. KREBS: Well --

5 THE COURT: I guess my concern is, listening to your
6 testimony and juxtaposing it with financials that we just heard
7 from Mr. Melton, it would appear that, as the plaintiff's
8 counsel brought out, that the net assets at the beginning of
9 2011 were \$864,000 and in 2010 was \$1,008,852. What happened
10 to all of that, or how is it that I am misreading or not
11 accounting properly for it that created the problems you have
12 been testifying about?

13 Do you want to look at the exhibit?

14 THE WITNESS: Please.

15 THE COURT: It is the penultimate line on the exhibit.

16 THE WITNESS: The question, your Honor, you would like
17 me to address?

18 THE COURT: Yes.

19 What did you do with the \$1,008,000.

20 THE WITNESS: I think as Mr. Melton, Andrew testified,
21 for accounting reasons these things get listed as assets,
22 things that are listed as assets for an accounting purpose that
23 really have no liquid value.

24 So the biggest thing that it looks like we have that
25 creates our assets, your Honor, is our facility, which we don't

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Weinberg - direct

1 own, and really from an accounting standpoint we're given
2 credit for the fact that we painted it and put in new carpets,
3 and it's making us look a lot wealthier, your Honor, than we
4 are, when in fact we had very little liquid assets at any given
5 time.

6 MS. KREBS: Thank you, Mr. Weinberg.

7 THE COURT: I will take back my exhibit.

8 THE WITNESS: Yes, sir.

9 MS. KREBS: Your Honor, I would like to explore which,
10 I believe is relevant from a punitive damages standpoint, the
11 reflection that STRIVE has made thus far based on the jury's
12 decision.

13 THE COURT: How can they?

14 MS. KREBS: Mr. Weinberg can answer the question and
15 indicate what, if any, reflection he has had based on it and
16 what, if any, steps he intends to take.

17 THE COURT: All right. I will listen over the
18 objection of the plaintiff. The jury will take this, obviously
19 you will take it for what it is worth.

20 THE WITNESS: There are a couple of things we would
21 like to put in place right away and a couple of decisions that
22 I have made in reflection upon the jury's decision, one of
23 which is to institute an annual training for all staff related
24 to diversity training, antidiscrimination, antiharassment
25 training, and a second of which I think I testified in during

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Weinberg - direct

1 the proceeding that when I first started at STRIVE I met
2 individually one on one with each staff member, and upon
3 reflection I think it's a good idea to do that each year. So I
4 will be institutionalizing that and really creating an open
5 forum for each staff member to share with me what it is they
6 would want to bring to that conversation.

7 BY MS. KREBS:

8 Q. Are there any other changes at this point being
9 contemplated?

10 A. At this point we are still consulting with our board of
11 directors. The proceeding happened on a Thursday. We had one
12 business day following that on Friday. Folks were scattered
13 for the holidays. We intend to have a careful, thoughtful
14 deliberative process to determine other steps. But at this
15 point we just haven't had an opportunity to do so.

16 Q. Thank you, Mr. Weinberg. No further questions.

17 THE COURT: Any cross?

18 CROSS EXAMINATION

19 BY MS. MESIDOR:

20 Q. Mr. Weinberg, you had previously testified that after your
21 investigation into the matter the board had taken certain steps
22 to reprimand Mr. Carmona, is that correct?

23 MS. KREBS: Objection.

24 Outside the scope of the direct.

25 MS. MESIDOR: If I may respond, your Honor?

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Weinberg - cross

1 THE COURT: No. I will allow it.

2 A. That's correct.

3 Q. That took place in approximately May of 2012, correct?

4 A. I think it would have been June, but approximately.

5 Q. So STRIVE has had a year to make any changes or do any
6 training that it wanted to do, isn't that correct?

7 A. Correct. There is a number of things STRIVE has done,
8 including doing a training along this line.

9 Q. Are you referring to the sexual harassment training that
10 STRIVE did?

11 A. Correct, harassment training.

12 Q. Thank you.

13 Now, you had previously mentioned that the
14 approximately \$1.2 million that his Honor had asked you about,
15 that predominantly had to deal with your fixed assets, is that
16 correct?

17 A. Correct.

18 Q. Now, of that \$1.2 million, your fixed assets are only about
19 \$770,000, is that correct?

20 A. I don't have the document in front of me, but I will agree
21 to that.

22 Q. So that leaves an approximate 650,000-and-somewhat dollars
23 after that, is that correct.

24 THE COURT: You can look at this if it will make you
25 more comfortable.

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Weinberg - cross

1 THE WITNESS: Thank you, sir.

2 A. OK. I'm prepared. What was your question?

3 Q. So my question is, after you took out the approximate seven
4 hundred, I'll say 35,000 -- hold on. Let me see if I'm reading
5 this correctly.

6 Yes. In taking out the approximate \$768,000 fixed
7 assets, it leaves approximately a million dollars for the rest
8 of the assets?

9 A. I am not following that by this exhibit. Are you talking
10 about 2011.

11 Q. No. I am looking at 2013. PD-A.

12 THE COURT: He doesn't have that in front of him.

13 Q. Do you have the exhibits that Mr. Melton used in front of
14 you?

15 A. I do not.

16 Q. I don't want to give you my exhibit because it has notes on
17 it.

18 MS. MESIDOR: Your Honor, can we locate the exhibits
19 that were used by the prior witness. I am not sure why they
20 were taken away from the witness stand.

21 THE COURT: Sure. If you find them, you're welcome to
22 use them.

23 MS. MESIDOR: Your Honor, just in the interest of
24 time.

25 Q. Mr. Weinberg, I am going to read to you from PD-A.

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Weinberg - cross

1 THE COURT: 3?

2 Q. It was PD-3, but now it was redubbed PD-3A, and it is the
3 balance sheet as of July 31, 2013. It shows a total assets of
4 approximately \$1.6 million.

5 When we deduct the approximate \$768,000 which you
6 indicated were fixed assets and that they were added for
7 accounting purposes and essentially really aren't assets, you
8 still have approximately 900 some-odd thousand dollars in
9 assets, is that correct?

10 A. I don't have the document in front of me.

11 THE COURT: I just don't happen to have a P&L, nobody
12 gave it to me, but I do have the balance sheet, so you're
13 welcome to it.

14 BY MS. MESIDOR:

15 Q. I am looking at the first page, sir. Does the first page
16 say balance sheet as of July 31, 2013?

17 A. Correct.

18 Q. Do you see the bottom, where it says total assets of \$1.6
19 million?

20 A. I do.

21 Q. Do you see the portion where it says fixed assets 768,000
22 some-odd dollars?

23 A. I do.

24 Q. What I am saying is when you deduct the \$768,000, minus
25 from the \$1.6 million, that leaves approximately \$900,000, does

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Weinberg - cross

1 it not?

2 A. I think what Mr. Melton --

3 Q. Can you answer my question, Mr. Weinberg.

4 A. I could with an explanation.

5 Q. I am not asking you for an explanation. I am asking you to
6 do arithmetic.

7 MS. KREBS: Your Honor, I would ask that the witness
8 be allowed to answer the question as he sees fit.

9 THE COURT: Well --

10 MS. MESIDOR: Your Honor, the witness has to answer
11 the question as it is posed.

12 THE COURT: Is that true? I'm missing your role. Do
13 you have one? Do you want to answer the question?

14 MS. MESIDOR: Your Honor, I'm sorry?

15 THE COURT: You can answer the question with the
16 explanation.

17 A. So, your characterization is correct, but I think that if
18 you look at the line items, I thought Andrew walked us through
19 rather cogently through the point that just about all the
20 assets left, if you look under current assets and receivables,
21 those are foundation grants, those are government contract, and
22 then there is some cash in the bank, but just about 90 percent
23 of that is locked up, meaning that it is obligated based on
24 contract, based on the grant, to be spent on a particular
25 purpose.

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Weinberg - cross

1 Q. Then the response as to how many assets are left over after
2 you deduct the fixed assets from the total number of assets is?

3 A. I don't have that math in front of me. I think Andrew made
4 clear the amount of money that we thought was nonencumbered, in
5 that sense. So I thought that that testimony was quite clear.

6 Q. Is the amount left over after fixed assets already moved
7 from the total amount of assets \$900,000?

8 A. Is the amount of money we have available? Not even close.

9 Q. I am not asking the amount of money that is available. I
10 am talking about in assets.

11 A. If you're asking me if 1.6 minus 768 is somewhere in the
12 range of 900,000, then I think the math holds.

13 Q. Thank you.

14 THE COURT: Any redirect?

15 MS. KREBS: Yes, your Honor. Very briefly.

16 THE COURT: Very briefly.

17 REDIRECT EXAMINATION

18 BY MS. KREBS:

19 Q. Mr. Weinberg, you already gave an explanation as to the
20 encumbered, and unencumbered of the assets. I just want to ask
21 one other question.

22 In looking at the list of assets, is that gross assets
23 or net assets? In other words, does that take into account
24 liabilities, the numbers that opposing counsel was just talking
25 about?

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Weinberg - redirect

1 A. This is gross. This is the amount of money we get, and
2 then we spend an awful lot of money to do the things we were
3 given the funds for. So it's a gross number, not a net number.

4 MS. KREBS: Thank you, your Honor.

5 THE COURT: You are excused.

6 THE WITNESS: Thank you very much.

7 THE COURT: Thank you.

8 That's mine. You can give it back to me.

9 I was reticent to give it to you in the first place.

10 THE WITNESS: Yes, sir.

11 (Witness excused)

12 MS. KREBS: Your Honor, may we take a two-minute break
13 before the last witness?

14 THE COURT: No.

15 MS. KREBS: I call Rob Carmona to the stand.

16 ROB CARMONA,

17 the defendant herein,

18 having been previously sworn, testified as follows:

19 THE DEPUTY CLERK: You are still under oath.

20 THE WITNESS: Yes.

21 THE COURT: You are still under oath to tell the
22 truth, Mr. Carmona.

23 THE WITNESS: Yes, sir.

24 DIRECT EXAMINATION

25 BY MS. KREBS:

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Carmona - direct

1 Q. Good afternoon, Mr. Carmona.

2 A. Good afternoon.

3 MS. KREBS: Your Honor, before I begin my questioning,
4 I would just like to approach to hand the witness an aid.

5 THE COURT: Sure.

6 THE WITNESS: Thank you.

7 THE COURT: You are going to mark it for
8 identification as 5. Is that what we are up to?

9 MS. KREBS: I believe we are up to PD-5, your Honor.

10 MS. MESIDOR: Your Honor, can we please know the
11 document that was given to the witness.

12 THE COURT: I would hope that they would give you a
13 copy even before me, believe it or not, but I gather they
14 waited.

15 MS. MESIDOR: Thank you, your Honor.

16 THE COURT: It is a jury aid. It is not in evidence.
17 You are welcome to use it during the course of the testimony,
18 but I think we all agree that it won't go into the jury room
19 with you. Yes.

20 MS. KREBS: Thank you, your Honor.

21 BY MS. KREBS:

22 Q. Mr. Carmona, I would like to take some time now and go
23 through the assets that you have.

24 First I would like to go through the assets, your
25 assets that you own jointly with another individual.

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Carmona - direct

1 A. Yes.

2 Q. Do you own a home in New Jersey?

3 A. Yes, I do.

4 Q. Have you recently had it appraised?

5 A. No.

6 MS. KREBS: Your Honor, permission to approach.

7 THE COURT: Yes.

8 MS. KREBS: Your Honor, we ask that this document be
9 admitted into evidence.

10 MS. MESIDOR: We would object, your Honor. This is a
11 website printout.

12 MS. KREBS: Your Honor, the --

13 THE COURT: I am not sure. Is that good or bad?

14 MS. MESIDOR: Your Honor, if I may?

15 THE COURT: I'm asking you.

16 MS. MESIDOR: OK.

17 If the defendant is attempting for us to take a
18 website printout as a declared value for the home, we would
19 object. There is a particular process within the real estate
20 industry in which homes are valued, and a website printout from
21 whatever, Yahoo.com would be insufficient to show the value of
22 the home as being one number as opposed to another.

23 THE COURT: We won't take it for value.

24 MS. KREBS: Your Honor, this is indicated mainly to
25 give an estimation, because the witness had no reason to have

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Carmona - direct

1 the house appraised recently. If counsel is looking to find
2 out what the value of his assets are, we need to have at least
3 some estimation or approximation.

4 THE COURT: Yes. So we are getting it.

5 We'll see what this does for us, if anything.

6 MS. KREBS: Your Honor, I would request that this be
7 admitted into evidence as PD-6.

8 THE COURT: It will be admitted as PD-6 subject to
9 connection.

10 (Defendant's Exhibit PD-6 received in evidence)

11 THE COURT: We will see what you believe the
12 connection with.

13 MS. MESIDOR: Your Honor, could the defendants please
14 clarify. Are they using both websites as PD-6 or just the one
15 website printout. I mean, your Honor --

16 THE COURT: I have a two-page exhibit. Is that what
17 you would like to have cut in half?

18 MS. MESIDOR: Your Honor, I have two different
19 exhibits that were given to us. Both of them have website
20 printouts of values of homes, and I just want to know which one
21 is being marked as PD-6. That's all.

22 THE COURT: I only have one. So we are going to
23 assume it's the one I have, which you are welcome to come up
24 and look at.

25 MS. MESIDOR: If defendants can state it on the

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Carmona - direct

1 record, then I have no objection.

2 MS. KREBS: Your Honor, I was just about to get to
3 that.

4 Q. Mr. Carmona, what is your home address at the property that
5 we were just saying that you owned in New Jersey?

6 A. 1656 Shelbourne Street, Teaneck, New Jersey.

7 Q. Is that the address that is reflected in what is now in
8 evidence as PD-6?

9 A. Yes, ma'am.

10 Q. Is this the document that you used as the basis for
11 estimating the range of value for your home for purposes of
12 this proceeding?

13 A. Yes, ma'am.

14 MS. KREBS: Your Honor, I apologize. Just a moment.

15 Q. Mr. Carmona, do you own your home free and clear?

16 A. No, I do not.

17 Q. What, if any, encumbrances do you have on this home?

18 A. I have an outstanding mortgage and a home equity loan.

19 MS. KREBS: Your Honor, may I approach?

20 THE COURT: Yes. But I am not taking PD-6 at the
21 moment, because I have no idea what it is supposed to tell me.
22 If it is a point comparable it is being used for, that won't
23 do.

24 MS. KREBS: It indicates on the right-hand side --
25 your Honor asked. May I respond to your question, your Honor?

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Carmona - direct

1 THE COURT: Yes.

2 MS. KREBS: On the right-hand side, about a third of
3 the way down, it identifies from two different sources a home
4 value estimate for this particular address, which provides a
5 range of the value for the home.

6 THE COURT: But the one comparable that it lists is
7 from '91.

8 MS. KREBS: That is not comparable, your Honor. It
9 indicates the sale history. That indicates when this home was
10 originally purchased. We obviously can't use the sale price
11 because that was from too many years ago. So this, those two
12 items up, the Zillow and E-Appraisal.com are the two estimates
13 by those two separate independent entities to provide a range
14 of what the value of the house is today.

15 THE COURT: I don't even know who they are, Zillow.
16 Anyway, I'm not taking it. It is out.

17 Let's go. You can ask him more about his mortgage and
18 his home equity loan.

19 MS. MESIDOR: Your Honor, we would request that it be
20 removed from the jury, please.

21 THE COURT: Please remove it from the jury.

22 BY MS. KREBS:

23 Q. Mr. Carmona, you have in front of you the document that's
24 been marked as PD-7. Do you see it?

25 A. Yes.

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Carmona - direct

1 Q. Does this reflect the home equity and mortgage balances
2 that you have just mentioned?

3 A. Yes, it does.

4 MS. KREBS: Your Honor, we ask that this be admitted
5 into evidence.

6 THE COURT: I am afraid you are ahead of me. I marked
7 PD-7 a document from Merrill Lynch that has on the left-hand
8 side the word "Balances."

9 Is that the one to which you're referring?

10 MS. KREBS: Yes, your Honor.

11 THE COURT: It is here for identification. Tell us
12 what it is, Mr. Carmona.

13 THE WITNESS: The top one is what I have left on my
14 mortgage to pay.

15 THE COURT: That amounts to?

16 THE WITNESS: \$94,104.

17 MS. KREBS: No, no.

18 THE WITNESS: No?

19 MS. MESIDOR: Objection.

20 THE COURT: Sustained.

21 MS. KREBS: Your Honor, may I conduct by questioning
22 of this document in order to demonstrate its authenticity?

23 THE COURT: Please.

24 MS. KREBS: Thank you.

25 BY MS. KREBS:

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Carmona - direct

1 Q. Mr. Carmona, would you please look down under the heading
2 credits and loans. Do you see that on the left-hand side,
3 under credits and loans?

4 A. Yes, ma'am.

5 Q. Looking across, we have redacted for personal reasons the
6 account numbers. But looking underneath, in that column under
7 account registration, do you see the two references, home
8 equity and mortgage?

9 A. Yes, I do.

10 Q. In looking across the column, this home equity and
11 mortgage, with respect to which property do those two accounts
12 reflect?

13 A. The Teaneck property.

14 Q. In looking along the line for the home equity, what does it
15 indicate the outstanding balance is on your home equity loan?

16 MS. MESIDOR: Objection.

17 THE COURT: Overruled.

18 A. \$47,567.73.

19 Q. And in looking at the line marked mortgage, what is your
20 outstanding balance on your mortgage?

21 A. \$136,604.93.

22 Q. So the total outstanding balance between those two
23 encumbrances on your Teaneck property, what do they total?

24 A. \$184,172.66.

25 MS. KREBS: Your Honor, I ask that this document be

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Carmona - direct

1 admitted into evidence?

2 THE COURT: Any objection?

3 MS. MESIDOR: No objection.

4 THE COURT: Very well. 7 will be admitted.

5 (Defendant's Exhibit PD-7 received in evidence)

6 BY MS. KREBS:

7 Q. Do you own any other properties, Mr. Carmona?

8 A. Yes, I do.

9 Q. How many?

10 A. One.

11 Q. Where is that located?

12 A. In Tampa, Florida.

13 Q. Is that a residence or rental property? Is that a
14 residence of yours or to generate income?

15 A. It is a rental.

16 MS. KREBS: Your Honor, I have another document that
17 reflects the range of value for that. May I assume that your
18 Honor is not going to admit that as your Honor did not admit
19 the other?

20 THE COURT: Correct. If it's the same or similar.

21 MS. KREBS: It is similar, but for this property.

22 BY MS. KREBS:

23 Q. What is the address of the property in Tampa?

24 A. 8201 Cypress Breeze Way, Tampa.

25 Q. When did you purchase the property?

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Carmona - direct

1 THE COURT: I will allow it.

2 A. I want to say eight or nine years ago.

3 Q. Do you own it outright, or do you have any encumbrances on
4 it?

5 A. No, we have a mortgage on it.

6 Q. When you say we, who is we?

7 A. Myself and my wife, who is back there.

8 Q. Was your wife's name?

9 A. Christina Carmona. Lucila Christina Carmona.

10 MS. KREBS: Your Honor, may I approach?

11 THE COURT: You may.

12 I am not sure what those two figures mean,

13 Mr. Carmona. The \$44,000 and the \$78,000.

14 Can you tell us?

15 THE WITNESS: I'm sorry, your Honor. Where are you
16 looking?

17 MS. MESIDOR: Your Honor --

18 THE COURT: The jury aid, the Florida property, less
19 mortgage. Less mortgage reflects the \$78,000 figure. Is that
20 what the mortgage is at this point in time?

21 MS. KREBS: Your Honor, may I authenticate this
22 document?

23 THE COURT: Excuse me.

24 MS. KREBS: May I question the witness to authenticate
25 the document.

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Carmona - direct

1 THE COURT: Is that a trick question?

2 Shall we see if he can answer it?

3 MS. KREBS: I'm sorry, your Honor, I don't know where
4 you are looking.

5 THE COURT: I am going to go through this one more.
6 You have PD-5 for identification, the jury aid in front of you.

7 MS. KREBS: The jury aid. I apologize, your Honor.

8 THE COURT: That's perfectly all right. We'll go
9 through it a fourth time if you like. If you look at the
10 second box, you will see it says Florida property, which he
11 testified that he bought some eight or nine years ago or would
12 like to say eight or nine years ago, and there are two figures.

13 One is next to or adjacent to the less mortgage
14 language. All I asked is whether that represented the amount
15 of the mortgage.

16 THE WITNESS: I am not sure what you are looking at.

17 THE COURT: We are going to go through this a fifth
18 time. It's going to be easy.

19 THE WITNESS: I just have the one page.

20 THE COURT: No. We are looking at this. Do you have
21 this?

22 THE WITNESS: Oh, yeah. OK. I'm sorry. I was
23 looking at the other thing.

24 THE COURT: That is perfectly all right Mr. Carmona.

25 THE WITNESS: OK.

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Carmona - direct

1 THE COURT: Let's go through it again.

2 You see the second box.

3 THE WITNESS: OK.

4 THE COURT: It talks about the less mortgage language.

5 Do you see that?

6 THE WITNESS: Yes.

7 THE COURT: Do you see where it says \$78,772.98?

8 THE WITNESS: Yes, sir.

9 THE COURT: What does that figure represent?

10 THE WITNESS: Well, there were two ranges, like in the
11 Zillow and the other one, they gave ranges of value because --

12 THE COURT: So this is not a mortgage amount?

13 THE WITNESS: That is what I would owe. This is those
14 figures minus what I still owe on the property in the
15 mortgages.

16 THE COURT: Those figures minus what you still owe.

17 Tell me what you still owe on the property.

18 THE WITNESS: I still owe \$94,315.

19 THE COURT: What then is your equity that you have in
20 the house. Can you figure that?

21 THE WITNESS: I guess I arrive at it, if I hear your
22 question correctly, by taking the original principal balance
23 and what I paid and what I have left to pay. That looks like
24 maybe \$33,000, if my math is right.

25 THE COURT: I think if we do it your way that's pretty

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Carmona - direct

1 close. That is what the house is worth free and clear for your
2 purposes, is that right?

3 THE WITNESS: Yes, sir.

4 THE COURT: OK. Thank you very much.

5 You may proceed.

6 MS. KREBS: Thank you, your Honor.

7 Mr. Carmona was just referring to the document that
8 has been marked as PD-8. I ask that it be admitted into
9 evidence.

10 MS. MESIDOR: We would object, your Honor. To the
11 extent that this document is reflective of the Zillow numbers
12 that are not in evidence, then all the calculations or numbers
13 that are listed for the purposes of assessing home value are
14 therefore incorrect and we would object to it being admitted
15 into evidence.

16 THE COURT: I am not sure it matters anything other
17 than the questions I asked him.

18 MS. KREBS: Your Honor, just to clarify for the
19 record, PD-8 that I was just referring to is the document that
20 was the recent mortgage loan statement that identifies as of
21 the end of August 2013 what Mr. Carmona's unpaid principal
22 balance is on his mortgage for the Tampa property.

23 THE COURT: It is addressed to him at the Teaneck
24 property address, right?

25 THE WITNESS: Yes, sir.

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Carmona - direct

1 MS. KREBS: Yes, your Honor.

2 THE COURT: OK. That's fine with me. I am not sure
3 we need it, but I will take it over the objection of the
4 plaintiff.

5 So you have PD-8 in front of you, Mr. Carmona?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: I don't think -- I don't know.

8 MS. KREBS: Your Honor, I think we have already
9 discussed it enough that I don't have any additional questions.

10 THE COURT: I would say more than enough.

11 MS. KREBS: Thank you, your Honor.

12 BY MS. KREBS:

13 Q. In addition to these two properties, real estate properties
14 that you jointly own with your wife, do you have any other
15 holdings that you and your wife own together?

16 A. Yes, ma'am.

17 Q. Do you have a checking, savings, credit card account with
18 your wife?

19 A. Yes, I do.

20 MS. KREBS: Permission to approach.

21 THE COURT: Very well.

22 BY MS. KREBS:

23 Q. Mr. Carmona, you have in front of you what has been marked
24 for identification as PD-9.

25 Do you see that?

D93njoh3

Carmona - direct

1 A. Yes.

2 Q. Could you please just identify for the Court and the jury
3 what that is?

4 A. This is my bank statements from Citibank from July 18 to
5 August 18 of this year.

6 Q. This statement indicates the status of your accounts as of
7 August 18, 2013?

8 A. Yes, ma'am.

9 MS. KREBS: Your Honor, we request that this be
10 admitted into evidence.

11 THE COURT: Any objection?

12 MS. MESIDOR: No, your Honor.

13 THE COURT: Very well.

14 PD-9 is admitted without objection.

15 (Defendant's Exhibit PD-9 received in evidence)

16 THE COURT: You see some of it is blacked out. It's
17 simply a redaction I made as a consequence of determining that
18 it was either some sort of confidential nature or irrelevant or
19 both.

20 BY MS. KREBS:

21 Q. Mr. Carmona, as of August 18, 2013, how much money did you
22 and your wife have together in your checking account, looking
23 at page 1?

24 A. Page 1? At the end of the month, \$275.

25 THE COURT: It wasn't the end of the month, but it was

D93njoh3

Carmona - direct

1 as of the statement period, right?

2 THE WITNESS: Yes, right. \$275.

3 BY MS. KREBS:

4 Q. As of August 18, 2013, how much money did you have in
5 regular savings?

6 A. \$5.

7 Q. And how much did you and your wife jointly have in your
8 account, in your preferred money market account as of August
9 18, 2013?

10 A. \$7,020.53.

11 Q. Thank you, Mr. Carmona. As of the August 18, 2013, what
12 did you owe in credit card debt, you and your wife together?

13 A. \$2,452.

14 Q. Now, do you and your wife also have a joint account through
15 Merrill Lynch, an investment type of account?

16 A. Yes. We do.

17 MS. KREBS: Your Honor, permission to approach?

18 THE COURT: Yes.

19 BY MS. KREBS:

20 Q. Mr. Carmona, do you have in front of you what's been marked
21 for identification as PD-10?

22 A. Yes, I do.

23 Q. Is this a statement of the joint account that you and your
24 wife have through Merrill Lynch?

25 A. Yes, it does.

D93njoh3

Carmona - direct

1 MS. KREBS: Your Honor, I ask that this be admitted
2 into evidence.

3 THE COURT: Any objection?

4 MS. MESIDOR: None, your Honor.

5 THE COURT: Very well.

6 10 will be admitted without objection.

7 (Defendant's Exhibit PD-10 received in evidence)

8 BY MS. KREBS:

9 Q. As of August 30, 2013, how much did you and your wife
10 jointly own in this account as part of cash and money?

11 A. All told, \$72,782.13.

12 Q. OK. Now please listen to my question. Let's break it down
13 one by one?

14 A. OK.

15 Q. First with respect to actual cash and money as of August
16 30, how much did you and your wife have together?

17 A. \$117.52.

18 Q. And with respect to the equities in this account, how much
19 did you and your wife have together?

20 A. \$7,116.86.

21 Q. Then turning your attention to the second to last page of
22 the exhibit --

23 A. Yes.

24 Q. -- there is something here that indicates Retirement
25 Optimizer. Do you see that?

D93njoh3

Carmona - direct

1 A. Yes, I do.

2 Q. Is that a joint annuity between you and your wife?

3 A. Yes, it is.

4 Q. What is the value of that?

5 A. \$65,547.75.

6 Q. Thank you. Mr. Carmona, do you also have a joint holding
7 with your brother?

8 A. Yes, I do.

9 THE COURT: Let me interrupt you. Just so I'm sure,
10 the fifth box down on this jury aid, which is PD-5 for
11 identification, is that not what we have been talking about,
12 just this moment?

13 MS. KREBS: Are you asking me, your Honor?

14 THE COURT: Yes.

15 MS. KREBS: What we have been talking about are the
16 two different ones, the one that's the fifth box down and the
17 sixth box down.

18 The fifth box down is the assets that are listed
19 between the cash money and the equities for a total of
20 \$72,034.38. Then there is a separate annuity that's called the
21 retirement optimizer that we just referred to, and that's the
22 next box down.

23 THE COURT: Very well. OK.

24 I am putting them together. But that's fine.

25 MS. KREBS: Permission to approach, your Honor?

D93njoh3

Carmona - direct

1 THE COURT: Yes.

2 I presume the plaintiff has been graced with a copy?

3 MS. MESIDOR: We have one, your Honor. Thank you.

4 BY MS. KREBS:

5 Q. I am showing you a document that's been marked, I think
6 it's PD-11 for identification.

7 A. Yes.

8 Q. Is this the account that you were just speaking about a
9 moment ago that you jointly hold your brother?

10 A. Yes, my brother Raul, my younger brother.

11 Q. I'm sorry?

12 A. My younger brother.

13 Q. I'm sorry. What was his name?

14 A. Raul.

15 Q. Raul. Your younger brother Raul.

16 When you opened this account how much money was
17 initially put in, in total?

18 A. \$10,000.

19 Q. And how much of that did you put in?

20 A. Five.

21 Q. And how much did he put in?

22 A. Five.

23 Q. And according to this, as of July 12, 2013, what is the
24 account balance, the value of this account?

25 A. \$12,380.43.

D93njoh3

Carmona - direct

1 MS. KREBS: Your Honor, we ask that this document be
2 admitted into evidence.

3 THE COURT: Any objection?

4 MS. MESIDOR: No objection, your Honor.

5 THE COURT: Very well. PD-11 for identification will
6 be admitted.

7 (Defendant's Exhibit PD-11 received in evidence)

8 Q. In addition to joint holdings that you have with your wife
9 and/or your brother, do you have any holdings that are yours
10 alone?

11 A. Yes, I do.

12 MS. KREBS: Permission to approach, your Honor?

13 THE COURT: Yes.

14 BY MS. KREBS:

15 Q. Mr. Carmona, does this reflect --

16 MS. MESIDOR: Objection, your Honor. We don't know
17 what document we are looking at.

18 MS. KREBS: I'm sorry.

19 I forgot to show you when I was walking up.

20 MS. MESIDOR: Thank you.

21 MS. KREBS: My apologies.

22 BY MS. KREBS:

23 Q. Mr. Carmona, is this document reflective of an account that
24 you hold in only your own name at Merrill Lynch?

25 A. Yes, it does, ma'am.

D93njoh3

Carmona - direct

1 Q. According to the documentation, as of August 30, 2013, how
2 much did you have in the account in terms of cash and money?

3 A. \$675.20.

4 Q. Then, going to the second to last page of this document, do
5 you see the mention of Pru Premier Retirement X?

6 A. Uh-huh.

7 Q. Yes?

8 A. Oh, yes.

9 Q. Do you see it? I'm sorry "uh-huh" won't show up on the
10 record.

11 A. OK.

12 Q. As of the date of this statement, what is the value of the
13 account?

14 A. 21,440 bucks.

15 MS. KREBS: Your Honor, we ask that this document be
16 admitted into evidence.

17 THE COURT: Any objection.

18 MS. MESIDOR: No objection, your Honor.

19 THE COURT: Very well. 12 for identification will be
20 admitted.

21 (Defendant's Exhibit PD-12 received in evidence)

22 MS. KREBS: Permission to approach.

23 THE COURT: Very well.

24 BY MS. KREBS:

25 Q. Do you have in front of you the document that's been marked

D93njoh3

Carmona - direct

1 PD-13 for identification?

2 A. Yes, I do.

3 Q. What does this document reflect?

4 A. The total value of the account as of July 31, 2013.

5 Q. Which account is this?

6 A. The Axa investment account.

7 Q. As of July 31, 2013, what was the value of that account?

8 A. \$1,024.55.

9 Q. \$1,024?

10 A. Twenty-four dollars and fifty-five cents, right.

11 MS. KREBS: Your Honor, we ask that this document be
12 admitted into evidence.

13 THE COURT: Any objection?

14 MS. MESIDOR: No objection, Your Honor.

15 THE COURT: All right.

16 13 is admitted without objection.

17 (Defendant's Exhibit PD-13 received in evidence)

18 MS. KREBS: Permission to approach?

19 THE COURT: Very well.

20 BY MS. KREBS:

21 Q. Mr. Carmona, do you have in front of a document that's been
22 marked as Exhibit PD-14?

23 A. Yes, I do.

24 Q. What is this?

25 A. My tax returns from last year.

D93njoh3

Carmona - direct

1 Q. For the year 2012?

2 A. '12, right.

3 Q. This is a joint tax return?

4 A. Yes, it is.

5 Q. What was your taxable wages for the year 2012?

6 A. \$157,354.

7 Q. The number that is on there, the taxable wages of the
8 \$157,354, you are filing jointly, but is that solely your
9 income?

10 A. Yes.

11 MS. KREBS: Your Honor, we ask that this document be
12 admitted into evidence.

13 THE COURT: Any objection?

14 MS. MESIDOR: No objection, your Honor.

15 THE COURT: PD-14 is admitted without objection.

16 (Defendant's Exhibit PD-14 received in evidence)

17 BY MS. KREBS:

18 Q. Mr. Carmona, assuming that your employment were to continue
19 as it has been, what do you anticipate your taxable wages will
20 be for the year 2013?

21 A. About 152,000.

22 Q. Do you receive any bonuses from STRIVE?

23 A. No.

24 Q. Have we encompassed all of the holdings that you have that
25 may be considered for purposes of punitive damages?

D93njoh3

Carmona - direct

1 A. Yes, we have.

2 Q. I'm done asking you about the financial component of it. I
3 just have a couple of questions to ask you.

4 Mr. Carmona, what were your intentions when you
5 communicated with Ms. Johnson during her employment?

6 MS. MESIDOR: Objection, your Honor.

7 THE COURT: Overruled.

8 A. We had been talking for the whole time she was there, and I
9 was just trying to help her, as all our conversations were
10 about.

11 Q. What, if anything, has the jury's verdict instructed you?

12 A. Excuse me. Well, this has really made me kind of take
13 stock on when I communicate with people that I am trying to
14 help and try to elicit or get them to understand up front that
15 what I am doing is trying to help.

16 In a lot of respects I come from a different time.
17 Hence the transition. I guess it's showing me that I got to
18 really take stock about that at my age.

19 MS. KREBS: Thank you, Mr. Carmona.

20 I have no further questions.

21 THE COURT: Any cross?

22 There is a Kleenex box if you like.

23 THE WITNESS: Thank you.

24 (Continued on next page)

D93njoh3

Carmona - direct

1 CROSS-EXAMINATION

2 BY MS. MESIDOR:

3 Q. Mr. Carmona, your current address 170 Prospect Avenue in
4 Hackensack, New Jersey, is that correct?

5 A. No.

6 Q. When you were deposed in June 4th, 2013, your address was
7 70 Prospect Avenue Hackensack, New Jersey, is that right?

8 MS. KREBS: Objection, your Honor.

9 THE COURT: Overruled. I have no idea where she is
10 going, but I will listen.

11 A. No. It was 175 Prospect Street.

12 Q. Is your address currently 175 Prospect?

13 A. At this moment, yes.

14 Q. So you don't live in the house in Teaneck, is that correct?

15 A. Not at the moment.

16 Q. You don't live in the house in Teaneck because you and your
17 wife are separated, is that correct?

18 MS. KREBS: Objection, your Honor.

19 THE COURT: Overruled.

20 A. Yes, we are.

21 Q. In the tax returns that you filed jointly with your wife,
22 Mr. Carmona, your wife's income is not reflected in the tax
23 returns, is that correct?

24 MS. KREBS: Objection, your Honor.

25 THE COURT: Overruled.

D936JOH4

Carmona - cross

1 THE WITNESS: Yes, it is.

2 Q. Can you please show us on PD-14 where your wife's income is
3 reflected on the tax return that you provided to the jury?

4 MS. KREBS: Objection, your Honor. Confidential.

5 THE COURT: Indeed on the tax return how much is it,
6 do you know?

7 THE WITNESS: My wife's income?

8 THE COURT: Yes.

9 THE WITNESS: I can a hazard a guess, your Honor.

10 THE COURT: We're talking a lot of money?

11 THE WITNESS: No. I would hazard a guess it is under
12 \$15,000.

13 BY MS. MESIDOR:

14 Q. Going also in your tax returns I am going to draw your
15 attention to page 6 of your tax return. It is the schedule
16 your tax return and your tax return is Exhibit PD-14.

17 A. Which page again?

18 Q. It is the Schedule E. It is the sixth page. You will have
19 to count it out.

20 A. I got it.

21 Q. Do you see the Schedule E?

22 A. Sorry. Yeah, I got it.

23 Q. You get \$16,000 in rent on the Teaneck property, isn't that
24 correct?

25 THE COURT: Line three. It is not a trick question.

D936JOH4

Carmona - cross

1 A. Yes.

2 Q. Could you show us in the flow chart that you have provided
3 to the jury as a jury aide where that \$16,000 in rent is
4 reflected?

5 A. Not there.

6 Q. Moving along. We're not going to the bank account
7 statement.

8 A. Which one?

9 Q. I am going to tell you in just one moment. The Citibank
10 statement.

11 A. Got it.

12 Q. Now, your basic checking has -- you previously testified
13 that the your basic checking has a balance of \$275. But you
14 have preferred money market balance of over \$7,000, isn't that
15 correct?

16 A. Yes, it is.

17 MS. KREBS: Objection, asked and answered.

18 THE COURT: Not on cross. The other side, they get an
19 opportunity to cross-examine.

20 Q. You have an individual retirement account with Citibank, is
21 that correct?

22 MS. KREBS: Objection.

23 THE COURT: Overruled.

24 MS. KREBS: Objection.

25 Q. Do you have an individual retirement account at Citibank?

D936JOH4

Carmona - cross

1 A. Me, myself?

2 Q. Yes, sir?

3 A. No. It's my wife's.

4 THE COURT: If it were, you weren't supposed to ask
5 about it.

6 MS. MESIDOR: Your Honor, there is no indication who
7 it belongs to. That is why I asked about it.

8 THE COURT: Is that right? It didn't matter who it
9 belonged to. It would have been preferable if you asked me
10 first if you could inquire since it is pretty clear what the law
11 is with respect to IRAs.

12 MS. MESIDOR: Your Honor, then I withdraw my question.

13 THE COURT: That's kind of you. Like I said earlier
14 on it didn't matter in this instance, because it is very hard
15 once the genie is out to put it back in the bottle.

16 MS. MESIDOR: My sincere apologies. We had gone over
17 the other investment and retirement accounts and I thought it
18 was appropriate, but I stand firmly corrected.

19 THE COURT: Very well. Why don't we adjourn to lunch
20 everybody. That will make it easy. We'll see you in, let's
21 say, quarter to 2:00. Since your lunch is here, it will not
22 take you so long to eat it.

23 (Jury excused)

24 (Continued on next page)

25

D936JOH4

Carmona - cross

1 (In open court; jury not present)

2 THE COURT: I have a charge and a verdict sheet. Why
3 don't we come back in 35 minutes and I'll go over it with you.
4 We can come back in 40 minutes and it will still be plenty of
5 time. Have a good lunch.

6 (Luncheon recess)

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D936JOH4

Carmona - cross

A F T E R N O O N S E S S I O N

1:45 p.m.

(In robing room)

THE COURT: I think you all have this charge. If there are any problems in this punitive damages charge, this is the time to let me know. The verdict sheet is underneath or on top.

Anything?

MS. MESIDOR: Yes, your Honor. Being that the prior verdict form already did the analysis that your Honor is requesting in paragraph two, we would ask that that entire paragraph be removed as well as the first two sentences on page 3 on the last paragraph. If memory serves correctly, your Honor, the last verdict sheet asks the jurors whether they thought that punitive damages should be awarded and they indicated yes. That instruction was already given to them as to whether or not they believe punitive damages should be awarded. They indicated it should be awarded. At this point it is just a matter of putting down a specific amount.

However, the second paragraph goes into if you think punitive damages should be awarded, here is what punitive means, etc., etc., and you give the definition of reckless indifference and malice which all goes towards the issue of whether punitive damages should be given, which is an issue that has already been decide. I think what your Honor states

1 in the first paragraph and the three bullet items on the third
2 page is the requisite analysis that they should be making at
3 this point. So I feel that the second paragraph as well as the
4 first three sentences in the last paragraph of page three
5 should be taken out.

6 THE COURT: Do defendants share that view?

7 MS. KREBS: No, your Honor. We're happy with the
8 charge the way it is written. I think it is appropriate to
9 restate the standard especially since it has been over a long
10 weekend and the jury is not expected to recall the exact
11 standard by which they are to apply it. Given the fact that
12 punitive damages are discretionary, not only overall but
13 certainly with respect to each particular defendant, I think
14 that the charge is correct and we would ask that it be
15 delivered exactly as written.

16 THE COURT: I think I will leave it this way.

17 MS. MESIDOR: Your Honor, we simply request our
18 objection be noted for the record. That's it.

19 THE COURT: Let's go. Maybe we'll get the jury out
20 and ready to go.

21 (Continued on next page)
22
23
24
25

D936JOH4

Carmona - cross

1 (In open court; jury present)

2 THE COURT: All right everybody. I hope you enjoyed
3 the government's fare. I think we'll continue with cross.

4 MS. MESIDOR: Your Honor, is it possible that we can
5 have the last question and answer read so that I know where I
6 left off. I don't believe I have much left.

7 THE COURT: You have to say that again.

8 MS. MESIDOR: I am sorry, your Honor. I was inquiring
9 whether it be permissible for you to instruct the court
10 reporter to read back the last question and the last answer.

11 THE COURT: Absolutely. If she could find it.

12 There are simply areas like there are in other
13 situations in which there are exclusions from what can be
14 utilized for punitive damages and IRAs are one of them. It is
15 a fairly clear statutory requirement. So how much it is,
16 whether there is one, whether it is his or hers, it doesn't
17 really matter. It should not have been gone into and she
18 understood that.

19 MS. MESIDOR: My apologies again, your Honor.

20 THE COURT: That's all right.

21 BY MS. MESIDOR:

22 Q. Moving on to what has been marked as PD-11, do you have
23 that exhibit before you, Mr. Carmona?

24 A. Yeah.

25 Q. Mr. Carmona, you previously testified that this account

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Carmona - cross

1 reflected an investment fund that you have with your brother?

2 A. Yes.

3 Q. Is your brother named on this account?

4 A. No, it is not.

5 Q. Thank you.

6 Mr. Carmona, isn't it true that your home in Teaneck
7 has a tax assessed value of \$407,000?

8 A. I don't know. What are you looking at?

9 MS. MESIDOR: Your Honor, may I approach the witness?

10 THE COURT: You may.

11 MS. MESIDOR: Your Honor, I have a document for
12 impeachment purposes. I would like to give it to the Court
13 before I show it to the witness.

14 THE COURT: Very well. Is this your only copy, is
15 that what you are trying to tell me?

16 MS. MESIDOR: Yes, your Honor. It is only for
17 impeachment purposes.

18 MS. KREBS: I understand it is for refreshing
19 recollection purposes to the extent that it does that.

20 THE COURT: We'll see what it does. It is really a
21 jury question. In any event if that is what it is for, I have
22 no reason to examine it more carefully.

23 Look at it, Mr. Carmona. See if it refreshes your
24 recollection. That doesn't mean it has to turn a little light
25 on in your head. It is not a question of reading it off the

D936JOH4

Carmona - cross

1 piece of paper.

2 BY MS. MESIDOR:

3 Q. Mr. Carmona, I will draw your attention to the second page
4 of the document.

5 A. Uh-huh.

6 Q. Do you see highlighted portion?

7 A. Yes.

8 Q. Do you see where it --

9 MS. KREBS: Objection. She is reading a document that
10 is not admitted into evidence.

11 THE COURT: We're going to ask him if it refreshes his
12 recollection. You mentioned what you believe it says and what
13 it means is another issue, but we'll not go into it.

14 MS. MESIDOR: Absolutely, your Honor. That was going
15 to be my next question.

16 Q. Do you see the highlighted portion there, sir?

17 A. Yes, I do.

18 Q. Does that refresh your recollection as to what the tax
19 assessed value of the home is?

20 A. I never seen this paper before.

21 THE COURT: So the answer is no.

22 Q. You can remove the document from you, sir.

23 Do you currently pay taxes at the Teaneck home?

24 A. Yes, we do.

25 Q. Approximately what are the taxes that you pay per year on

D936JOH4

Carmona - cross

1 that home?

2 A. I don't know. I don't care of that stuff. My wife has
3 been doing that for years. I really don't.

4 Q. As it relates to your Tampa, Florida home, isn't it true,
5 Mr. Carmona, that that land has -- that property has a tax
6 assessed value of \$114,000?

7 A. Excuse me?

8 Q. Isn't it true that the Tampa home -- it is not on the
9 document, sir. I am asking you you question. The Tampa home
10 has an assessed value -- tax value of \$114,000?

11 A. I don't know.

12 Q. Mr. Carmona, when you were asked on direct how you feel
13 about the verdict now, you had indicated that it was requiring
14 you to take a certain amount of stock, is that correct?

15 A. Yes.

16 Q. Mr. Carmona, previously when you were being cross-examined
17 on this case, you were pointed to various aspects in your
18 conversation with Ms. Johnson when she indicated to you that
19 she was offended by your comment, is that right?

20 A. Yeah.

21 MS. KREBS: Objection.

22 THE COURT: I will allow it. It is cross.

23 Q. Mr. Carmona, in response to her saying that you were
24 offended, you said you didn't care that she was offended, isn't
25 that correct?

D936JOH4

Carmona - cross

1 A. No. I didn't say that.

2 Q. You didn't say that, Mr. Carmona?

3 A. That I didn't care?

4 Q. Yes. You said you can be offended if you want to, but it
5 is true. Isn't that what you said?

6 A. Yes, I did say that.

7 Q. And, Mr. Carmona, when my opposing counsel gave you an
8 opportunity to apologize to Ms. Johnson, you declined to do so,
9 is that right?

10 A. Yes.

11 Q. That was Wednesday, was it not, Mr. Carmona?

12 A. Yes, it was.

13 MS. MESIDOR: No further questions for this witness.

14 THE COURT: Any redirect?

15 MS. KREBS: Yes, very briefly, your Honor.

16 REDIRECT EXAMINATION

17 BY MS. KREBS:

18 Q. Mr. Carmona, you were asked on cross-examination about that
19 you currently reside in an address of 175 Prospect Street. Do
20 you recall that?

21 A. Yes.

22 Q. Do you own that property?

23 A. No.

24 Q. Do you pay a rental amount on that property?

25 A. Yes.

D936joh4

Carmona - redirect

1 Q. You also were asked about a flow chart that was provided as
2 a jury aide. Just for clarification, did you write that flow
3 chart?

4 A. No, I did not.

5 Q. You were asked about the exhibit with your tax return?

6 A. Right.

7 Q. You were asked about --

8 THE COURT: 14.

9 MS. KREBS: Excuse me, your Honor?

10 THE COURT: 14.

11 MS. KREBS: Thank you, your Honor.

12 Q. Exhibit PD-14 you were asked about the alleged rental
13 income --

14 A. Yes.

15 Q. -- that you have earned from the Tampa property?

16 A. Yes.

17 Q. Do you have the document in front of you?

18 A. Yes, I do.

19 Q. Could you turn to that page. I believe it is the sixth
20 page in the document itself.

21 THE COURT: Schedule E.

22 A. Yes.

23 Q. In looking at the entirety of that page as opposed to that
24 first line about rents received, after expenses and alike did
25 you show a profit or a loss on that home?

D936joh4

Carmona - redirect

1 A. We showed a loss of 500 bucks and change.

2 MS. KREBS: Nothing further, your Honor.

3 THE COURT: You are excused. Thank you very much.

4 What is next?

5 MS. KREBS: We have no more witnesses, your Honor.

6 THE COURT: You may step down, Mr. Carmona.

7 (Witness excused)

8 THE COURT: Does the plaintiff have any witnesses?

9 MS. MESIDOR: No, your Honor.

10 THE COURT: Why don't I charge you now. Why waste any
11 time. You just had lunch. You are shall bright eyed and bushy
12 tailed and ready to work. So here we go. It is a single
13 charge.

14 MS. KREBS: Your Honor, I apologize for interrupting.
15 I wanted to know are the parties going to get a few minutes to
16 just sum up on the punitive damages part?

17 THE COURT: If you want to sum up, you can do that. I
18 will be glad to let you do that now. You want time to think it
19 over?

20 MS. KREBS: No. I wanted to know if your Honor was
21 going to allow us the opportunity.

22 THE COURT: I am perfectly happy. If you want to sum
23 up, I want you to sum up. You go first.

24 MS. KREBS: Thank you, your Honor.

25 THE COURT: Keep in mind it was very brief here.

D936joh4

Carmona - redirect

1 MS. KREBS: And I intend my closing remarks on this to
2 be equally brief.

3 THE COURT: Well, I am sorry I pushed you further than
4 maybe I should have. You can turn it towards the jury, the
5 podium, if you like or you can stay right there.

6 MS. KREBS: I am fine, your Honor. I can see each of
7 the jurors. I think they can see me.

8 THE COURT: If you are fine, I am fine.

9 MS. KREBS: Thank you, your Honor. Ladies and
10 gentlemen of the jury, I just want to address you for a few
11 moments with respect to the issue of punitive damages.
12 Obviously this is an important decision for you to make. I
13 want to take a few moments because there was a lot of number
14 crunching and listing. I wanted to crunch it a little bit
15 together for you and address that aspect.

16 First, I just want to talk about STRIVE. I think the
17 testimony was very demonstrative of the fact that STRIVE is not
18 in a great financial situation. Almost 90 percent of their
19 income as testified to by Mr. Milton is encumbered, which means
20 it is designated for various specific purposes by contract or
21 law and therefore cannot be used to pay any sort of punitive
22 damages award. I understand that plaintiff's counsel tried to
23 draw your attention time and time again to listing of assets,
24 but of course looking at assets really doesn't mean looking at
25 liability as well. It is not gross assets that matter. It is

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Carmona - redirect

1 damages that matter. Particularly we are talking about their
2 assets. A very significant portion of their assets are in
3 these lease hold improvements that they cannot take with them.
4 It is paint on the wall, carpet on the floor. Things that
5 cannot be turned into liquidity for purposes of paying punitive
6 damages award.

7 Mr. Milton, CPA, with many years of experience
8 testified about the financial condition of STRIVE. I think it
9 is important to note that as he pointed out he is not an actual
10 employee the STRIVE. He is an independent contractor,
11 consultant. He has a certain amount of separateness
12 objectivity that he brings to his testimony. He explained that
13 as of the end of July of 2013, STRIVE was barely in the black.
14 It was just over \$8,600 in terms of its net assets.

15 In addition, Mr. Weinberg testified and he told you
16 that STRIVE is taking your decision on the compensatory damages
17 stage of the case very seriously. They have already decided to
18 implement certain changes based on that to try and improve the
19 circumstances at STRIVE. He indicated that there may be very
20 well be more on the way, but it has been a short time since the
21 decision was rendered. So there has not been too much time to
22 contemplate other types of changes.

23 Plaintiff herself during her own testimony during the
24 primary portion of the case admitted that STRIVE does good
25 work. I would like you to just keep that in mind when you

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Carmona - redirect

1 think about how much, if any, punitive damages to assess
2 against STRIVE.

3 Now I want to turn for a moment to Mr. Carmona. I am
4 not going to tell you that Mr. Carmona is in dire straits as
5 STRIVE is as an individual, but we're not talking about an
6 individual who is rich. Other than the houses, which are both
7 heavily encumbered, over \$130,000 on his house in New York --
8 rather in New Jersey and \$94,000 on his house in Tampa, other
9 than that he has very few other assets. He has about \$23,000
10 in assets that are solely in his name and he has approximately
11 a total of maybe, again aside from the house, approximately
12 \$90,000 in assets. Those are co-owned with other individuals.
13 Those two other individuals are either his brother or his wife.
14 Neither of whom are parties in this case.

15 Mr. Carmona also did testify that your verdict the
16 other day has caused him to reassess how he communicates and
17 the fact that though he may have intentions of trying be
18 helpful and positive and constructive, perhaps others don't see
19 it the same way. Again, I just ask you to take all of those
20 things into account when you consider the amount, if any, of
21 punitive damages that are needed to award against Mr. Carmona
22 in accordance with purposes of punitive damages, which the
23 Court will instruct you momentarily.

24 I thank you very much for your time, not only today
25 but throughout the course of this trial. I realize it has been

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Carmona - redirect

1 many days and we do appreciate your service. Thank you.

2 THE COURT: Does the plaintiff wish to sum up?

3 MS. MESIDOR: Yes, your Honor. Ladies and gentlemen
4 of the jury, I find myself before you again to address the
5 level of offense which Mr. Carmona and STRIVE did to my client
6 Ms. Brandi Johnson. As you look upon the financial condition
7 of both parties and move forward as to what can be
8 appropriately assessed, the questions that I would ask that you
9 ask yourselves are: How reprehensible or offensive was that
10 which STRIVE and Mr. Carmona did to Ms. Johnson? The second
11 question I would like you to ask yourselves is: How much based
12 on each of their individual financial condition do you believe
13 would serve as a sufficient deterrent so that they never do
14 this again?

15 A lot of numbers have been laid out before you. I've
16 addressed and I have highlighted my issues regarding these
17 numbers. Because while we do have a flow chart that shows the
18 amount of revenue that came in this year and the amount of
19 money that was spent this year, the flow chart does not
20 represent how much they already had at the beginning of the
21 year. The other issue that I highlighted to you was how much
22 of the money that came in this year and was spent this year was
23 actually restricted. Now, this number of 90 percent of it is
24 indeed restricted has been thrown around. However, when you
25 look at very chart that defendants give you, if you add up the

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Carmona - redirect

1 three categories of unrestricted funds, it actually totals up
2 to more than 10 percent of it being unencumbered in any way.

3 While STRIVE can tell you right now how they've had
4 difficulty making ends meet and alike, you also must take into
5 consideration that STRIVE stood by this decision. They stood
6 by Mr. Carmona when he used the N-word and called my client the
7 N-word and tried to adapt it as part of their tough-love
8 culture. If indeed they had any fear or wanted to protect the
9 good work that they did, they should have done more than what
10 they have done to date. The only corrective action that you
11 heard about anything in regards to the year and change that
12 they have known about this litigation and the accusation
13 therein is one sexual harassment course. While Mr. Weinberg
14 can get on the stand and tell you about his plans about what he
15 plans to do, it would seem that what has already been
16 established of what they have done over the past year is nil.

17 Ladies and gentlemen, calling somebody the N-word is a
18 very serious thing. I have already highlighted to you during
19 the first portion of our trial as well as my summation the
20 level of impact that doing such a thing has. However, you've
21 also heard that the compensatory damages that you've already
22 awarded will probably be covered by insurance and if you give
23 the defendants no punitive damages, you have essentially let
24 them get away with it because no money out of their own
25 operating account, out of STRIVE's own pocket, out of Mr.

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Carmona - redirect

1 Carmona's own pocket is going to toward the punitive damages.
2 If what you heard in this trial is indeed reprehensible, if
3 what happened to my client is something that you indeed are
4 taking a stand against, we need more than just you saying they
5 discriminated against you. We need you to hit where it hurts
6 and that is directly in the pocket. We're not indicating that
7 STRIVE should be bankrupt and they should not continue in doing
8 what they have done. What we are indicating is that there need
9 to be a serious look and serious change as to how they continue
10 to conduct business. Without the message that if you do this
11 it is going to hurt in your pockets, I am not convinced anymore
12 than I am convinced by Mr. Carmona's ghost tears on the stand
13 that any change will indeed come. Thank you.

14 THE COURT: You've already determined that the
15 plaintiff is entitled to punitive damages. Now you have heard
16 all of the evidence in this case. The only issue remaining is
17 the amount, if any, of punitive damages to which you find the
18 plaintiff is entitled. As you know in addition to the
19 compensatory damages that you've already awarded the plaintiff,
20 the law permits the jury under limited circumstances to award
21 an injured person punitive damages.

22 Now that you have found that STRIVE and Mr. Carmona
23 discriminated and retaliated against the plaintiff, you must
24 decide whether these defendants acted with a requisite malice
25 or reckless indifference that permits you to award punitive

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Carmona - redirect

1 damages. Malice is, as I explained last week, defined as the
2 intent without justification or excuse to commit a wrongful
3 acts. Reckless indifference is defined as the conscious
4 disregard of harm that one's actions could do for the interests
5 or rights of another. If you find that these defendants acted
6 with malice or reckless disregard then in addition to any
7 actual or nominal damages to which you find the plaintiff
8 entitled, you may, but are not required to award the plaintiff
9 an additional amount as punitive damages if you find it is
10 appropriate to punish these defendants or to deter these
11 defendants and others from similar conduct in the future.

12 You must consider Mr. Carmona and STRIVE separately
13 when determining what amount, if any, to award in punitive
14 damages against either defendant. If you determine that either
15 of the defendants' conduct justifies an award of punitive
16 damages, then you may award an amount of punitive damages which
17 all jurors agree is proper. In fixing the amount you should
18 consider the following questions:

19 How offensive was the conduct?

20 What amount is needed considering each defendants'
21 financial condition to prevent future repetition of this
22 conduct

23 Does the amount of punitive damages have a reasonable
24 relationship to the actual damages awarded?

25 The award of punitive damages is within your

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Carmona - redirect

1 discretion. You are not required to award them. If you decide
2 to award punitive damages, you must use sound reason in setting
3 the amount -- it must not reflect bias, prejudice or sympathy
4 toward any party. But the amount may be as large as you
5 believe necessary to fulfill the purposes of punitive damages.
6 You may impose punitive damages against one of the defendants
7 and not the other or against both defendants in different
8 amounts.

9 Again, ladies and gentlemen, all of what I told you in
10 my earlier charge and all of the role of the jury plays is the
11 same as it was last week. Indeed, there is a verdict form
12 which I will also hand out after the marshal has been sworn and
13 you begin your deliberations.

14 Again, if there is any part of the testimony or any
15 part of my charge, this charge, that you want, all you need do
16 is ask the foreman write me a note and we'll provide it to you.

17 Do we have a marshal?

18 THE DEPUTY CLERK: Yes, your Honor.

19 (Marshal sworn)

20 THE COURT: Please don't take the two jury aides that
21 were passed out since they are not in evidence.

22 (At 2:15 p.m., the jury retired to deliberate)

23 THE COURT: Everybody, you are welcome to sit down and
24 wait. We'll be available.

25 (Recess pending verdict)

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(In open court; jury not present)

THE COURT: There is a note from the jury that we will put on the record. It reads, We the jury have come to a verdict. It is 9-3-2013, Richard Schwartz, 3:45 p.m. I don't know what number court exhibit it is.

THE DEPUTY CLERK: Court Exhibit J.

THE COURT: Thank you.

THE DEPUTY CLERK: Jury entering.

(Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Are you going to take them through it.

3 THE DEPUTY CLERK: Will do.

4 THE COURT: The foreperson should rise and my clerk
5 will take the verdict.

6 THE DEPUTY CLERK: 12 CV 4460, Brandi Johnson V STRIVE
7 East and Robert Carmona.

8 Verdict Form One: What amount of punitive damages, if
9 any, did plaintiff prove by a preponderance of the evidence to
10 each defendant, Rob Carmona?

11 THE FOREPERSON: \$25,000.

12 THE DEPUTY CLERK: STRIVE East Harlem?

13 THE FOREPERSON: \$5,000.

14 THE COURT: Thank you.

15 Do you want the jury polled this time?

16 MS. MESIDOR: Yes, your Honor.

17 THE COURT: Very well.

18 (Jury polled; each juror answered in the affirmative)

19 THE COURT: Ladies and gentlemen, you have worked
20 beyond the call of duty. I thank you for your efforts. I
21 think we have come to the end of the line. So with my thanks,
22 you are discharged.

23 (Jury discharged)

24 THE COURT: Ladies and gentlemen, any motions that you
25 choose to make, please make in conformity with the federal

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1 rules, which I am sure you will find fairly generous but indeed
2 there need be more time, although I think it is jurisdictional,
3 if you both agree, I assume we can give you more time.

4 Thank you all. Have a good week and I think probably
5 we may or may not see you again.

6 MS. MESIDOR: Thank you your Honor.

7 MS. KREBS: Thank you, your Honor.

8 THE DEPUTY CLERK: All rise.

9 o0o

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PLAINTIFF EXHIBITS

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PD-3	678
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PD-1	670
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PD-6	717
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